

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

JULY 10, 1996.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 2823]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2823) to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the “International Dolphin Conservation Program Act”.

(b) REFERENCES TO MARINE MAMMAL PROTECTION ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 2. PURPOSE AND FINDINGS.

(a) PURPOSE.—The purposes of this Act are—

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

(b) FINDINGS.—The Congress finds the following:

(1) The nations that fish for tuna in the eastern tropical Pacific Ocean have reduced dolphin mortalities associated with that fishery from hundreds of thousands annually to fewer than 5,000 annually.

(2) The provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities.

(3) Tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market.

SEC. 3. DEFINITIONS.

Section 3 (16 U.S.C. 1362) is amended by adding at the end the following new paragraphs:

“(28) The term ‘International Dolphin Conservation Program’ means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama, that requires—

“(A) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000, with the commitment and objective to progressively reduce dolphin mortality to levels approaching zero through the setting of annual limits;

“(B) the establishment of a per-stock per-year mortality limit for dolphins, for each year through the year 2000, of between 0.2 percent and 0.1 percent of the minimum population estimate;

“(C) beginning with the year 2001, that the per-stock per-year mortality of dolphin not exceed 0.1 percent of the minimum population estimate;

“(D) that if the mortality limit set forth in subparagraph (A) is exceeded, all sets on dolphins shall cease for the fishing year concerned;

“(E) that if the mortality limit set forth in subparagraph (B) or (C) is exceeded sets on such stock and any mixed schools containing members of such stock shall cease for that fishing year;

“(F) in the case of subparagraph (B), to conduct a scientific review and assessment in 1998 of progress toward the year 2000 objective and consider recommendations as appropriate; and

“(G) in the case of subparagraph (C), to conduct a scientific review and assessment regarding that stock or those stocks and consider further recommendations;

“(H) the establishment of a per-vessel maximum annual dolphin mortality limit consistent with the established per-year mortality caps; and

“(I) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

“(29) The term ‘Declaration of Panama’ means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.”

SEC. 4. AMENDMENTS TO TITLE I.

(a) AUTHORIZATION FOR INCIDENTAL TAKING.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended as follows:

(1) By inserting after the first sentence “Such authorizations may also be granted under title III with respect to the yellowfin tuna fishery of the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103.”

(2) By striking the semicolon in the second sentence and all that follows through “practicable”.

(b) DOCUMENTARY EVIDENCE.—Section 101(a) (16 U.S.C. 1371(a)) is amended by striking so much of paragraph (2) as follows subparagraph (A) and as precedes subparagraph (C) and inserting:

“(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

“(i) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of the International Dolphin Conservation Program Act;

“(ii) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps (in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission) necessary to become a member of that organization, or the Inter-American Tropical Tuna Commission, whichever is appropriate, and such harvesting nation has implemented the obligations of the International Dolphin Conservation Program and the obligations of that member as member of the Inter-American Tropical Tuna Commission;

“(iii) the total dolphin mortality permitted under the International Dolphin Conservation Program will not exceed 5,000 in 1996, or in any year thereafter, consistent with the commitment and objective of progressively reducing dolphin mortality to levels approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality; and

“(iv) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation has not vetoed the participation by any other nation in such Program.”.

(c) ACCEPTANCE OF EVIDENCE COVERAGE.—Section 101 (16 U.S.C. 1371) is amended by adding at the end the following new subsections:

“(d) ACCEPTANCE OF DOCUMENTARY EVIDENCE.—The Secretary shall not accept documentary evidence referred to in section 101(a)(2)(B) as satisfactory proof for purposes of section 101(a)(2) if—

“(1) the government of the harvesting nation does not authorize the Inter-American Tropical Tuna Commission to release sufficient information to the Secretary to allow a determination of compliance with the International Dolphin Conservation Program; or

“(2) after taking into consideration this information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including but not limited to information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

“(e) EXEMPTION.—The provisions of this Act shall not apply to a citizen of the United States when such citizen incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6))) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.”.

(d) ANNUAL PERMITS.—Section 104(h) is amended to read as follows:

“(h) ANNUAL PERMITS.—(1) Consistent with the regulations prescribed pursuant to section 103 and the requirements of section 101, the Secretary may issue an annual permit to a United States vessel for the taking of such marine mammals, together with regulations to cover the use of any such annual permits.

“(2) Annual permits described in paragraph (1) for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 304, subject to the regulations issued pursuant to section 302.”.

(e) REVISIONS AND FUNDING SOURCES.—Section 108(a)(2) (16 U.S.C. 1378(a)(2)) is amended as follows:

(1) By striking “and” at the end of subparagraph (A).

(2) By adding at the end the following:

“(C) discussions to expeditiously negotiate revisions to the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 UST 230, TIAS 2044) which will incorporate conservation and management provisions agreed to by the nations which have signed the Declaration of Panama; and

“(D) discussions with those countries likely to participate in the International Dolphin Conservation Program, to identify alternative sources of funds to ensure that needed research and other measures benefiting effec-

tive protection of dolphins, other marine species, and the marine ecosystem;”.

(f) REPEAL OF NAS REVIEW.—Section 110 (16 U.S.C. 1380) is amended as follows:

(1) By redesignating subsection (a)(1) as subsection (a).

(2) By striking subsection (a)(2).

(g) LABELING OF TUNA PRODUCTS.—Paragraph (1) of section 901(d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)(1)) is amended to read as follows:

“(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term ‘Dolphin Safe’ or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains any of the following:

“(A) Tuna harvested on the high seas by a vessel engaged in driftnet fishing.

“(B) Tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (2).

“(C) Tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (3).

“(D) Tuna harvested by a vessel engaged in any other fishery with a regular and significant incidental mortality of marine mammals.”.

(h) DOLPHIN SAFE TUNA.—(1) Paragraph (2) of section 901(d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)(2)) is amended to read as follows:

“(2)(A) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins, or if the product meets the requirements of subparagraph (B).

“(B) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no dolphins were killed during the sets in which the tuna were caught and the product is accompanied by a written statement executed by—

“(i) the Secretary or the Secretary’s designee;

“(ii) a representative of the Inter-American Tropical Tuna Commission; or

“(iii) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and documents that no dolphins were killed during the sets in which the tuna concerned were caught.

“(C) The statements referred to in clauses (i), (ii), and (iii) of subparagraph (B) shall be valid only if they are endorsed in writing by each exporter, importer, and processor of the product, and if such statements and endorsements comply with regulations promulgated by the Secretary which would provide for the verification of tuna products as dolphin safe.”.

(2) Subsection (d) of section 901 of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)) is amended by adding the following new paragraphs at the end thereof:

“(3) For purposes of paragraph (1)(C), tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

“(A) it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; or

“(B) in any fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, it is accompanied by a written statement executed by the captain of the vessel and an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

“(4) For purposes of paragraph (1)(D), tuna or a tuna product that contains tuna harvested in a fishery identified by the Secretary as having a regular and signifi-

cant incidental mortality or serious injury of marine mammals is dolphin safe if it is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary certifying that no marine mammals were killed in the course of the fishing operation or operations in which the tuna were caught.

“(5) No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, unless such product is labeled as dolphin safe in accordance with this subsection.”.

(i) TRACKING AND VERIFICATION.—Subsection (f) of section 901 of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)) is amended to read as follows:

“(f) TRACKING AND VERIFICATION.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement subsection (d) not later than 3 months after the date of enactment of the International Dolphin Conservation Program Act. Such regulations shall, consistent with international efforts and in coordination with the Inter-American Tropical Tuna Commission, establish a domestic and international tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d), including but not limited to each of the following:

“(1) Specific regulations and provisions addressing the use of weight calculation.

“(2) Additional measures to enhance observer coverage if necessary.

“(3) Well location and procedures for monitoring, certifying, and sealing holds above and below deck or other equally effective methods of tracking and verifying tuna labeled under subsection (d).

“(4) Reporting receipt of and database storage of radio and facsimile transmissions from fishing vessels containing information related to the definition of sets.

“(5) Shore-based verification and tracking throughout the transshipment and canning process.

“(6) Provisions for annual audits for caught, landed, and processed tuna products labeled in accordance with subsection (d).

The Secretary, when developing these regulations, shall establish appropriate procedures for ensuring the confidentiality of proprietary information either mandated or submitted voluntarily.”.

SEC. 5. AMENDMENTS TO TITLE III.

(a) HEADING.—The heading of title III is amended to read as follows:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM”.

(b) FINDINGS.—Section 301 (16 U.S.C. 1411) is amended as follows:

(1) In subsection (a), by amending paragraph (4) to read as follows:

“(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce, with the goal of eliminating, dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.”.

(2) In subsection (b), by amending paragraphs (2) and (3) to read as follows:

“(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

“(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean that are not operating in compliance with the International Dolphin Conservation Program;”.

(c) INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.—Section 302 (16 U.S.C. 1412) is amended to read as follows:

“SEC. 302. AUTHORITY OF THE SECRETARY.

“(a) REGULATIONS TO IMPLEMENT PROGRAM REGULATIONS.—(1) The Secretary shall issue regulations to implement the International Dolphin Conservation Program.

“(2)(A) Not later than 3 months after the date of enactment of this section, the Secretary shall issue regulations to authorize and govern the incidental taking of marine mammals in the eastern tropical Pacific Ocean, including any species of ma-

rine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

“(B) Regulations issued under this section shall include provisions—

- “(i) requiring observers on each vessel;
- “(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of marine mammals in fishing operations;
- “(iii) prohibiting intentional deployment of nets on, or encirclement of, dolphins in violation of the International Dolphin Conservation Program;
- “(iv) requiring the use of special equipment, including dolphin safety panels in nets, ocean current sensors or monitoring devices, as practicable, to detect unsafe fishing conditions before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;
- “(v) ensuring that the backdown procedure during the deployment of nets on, or encirclement of, dolphins is completed and rolling of the net to sack up has begun no later than 30 minutes after sundown;
- “(vi) banning the use of explosive devices in all purse seine operations;
- “(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits, in accordance with the International Dolphin Conservation Program;
- “(viii) preventing the intentional deployment of nets on, or encirclement of, dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;
- “(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;
- “(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment (including new technology for detecting unsafe fishing conditions before nets are deployed by a tuna vessel) that may reduce or eliminate dolphin mortality or do not require the encirclement of dolphins in the course of commercial yellow-fin tuna fishing;
- “(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and
- “(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

“(C) The Secretary may make such adjustments as may be appropriate to the requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

“(b) CONSULTATION.—In developing regulations under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

“(c) EMERGENCY REGULATIONS.—(1) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse effect on a marine mammal stock or species, the Secretary shall take actions as follows—

- “(A) notify the Inter-American Tropical Tuna Commission of the Secretary’s findings, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and
 - “(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.
- “(2) Prior to taking action under paragraph (1) (A) or (B), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.
- “(3) Emergency regulations prescribed under this subsection—
- “(A) shall be published in the Federal Register, together with an explanation thereof; and

“(B) shall remain in effect for the duration of the applicable fishing year; and The Secretary may terminate such emergency regulations at a date earlier than that required by subparagraph (B) by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for the emergency action no longer exist.

“(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

“(d) RESEARCH.—The Secretary shall, in cooperation with the nations participating in the International Dolphin Conservation Program and with the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program. Such research may include but shall not be limited to any of the following:

“(1) Devising cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean.

“(2) Developing cost-effective methods of fishing for mature yellowfin tuna without deployment of nets on, or encirclement of, dolphins or other marine mammals.

“(3) Carrying out a stock assessment as described in section 117 for those marine mammal species and stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States.

“(4) Studying the effects of chase and encirclement on the health and biology of dolphin and individual dolphin populations incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. There are authorized to be appropriated to the Department of Commerce \$1,000,000 to be used by the Secretary, acting through the National Marine Fisheries Service, to carry out this paragraph. Upon completion of the study, the Secretary shall submit a report containing the results of the study, together with recommendations, to the Congress and to the Inter-American Tropical Tuna Commission.

“(5) Determining the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks, and nontarget species.

The Secretary shall include a description of the annual results of research carried out under this subsection in the report required under section 303.”

(d) REPORTS.—Section 303 (16 U.S.C. 1414) is amended to read as follows:

“SEC. 303. REPORTS BY THE SECRETARY.

“Notwithstanding section 103(f), the Secretary shall submit an annual report to the Congress which includes each of the following:

“(1) The results of research conducted pursuant to section 302.

“(2) A description of the status and trends of stocks of tuna.

“(3) A description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and other nontarget species.

“(4) A description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program’s goals and objectives, including the protection of dolphin populations in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program.

“(5) Actions taken by the Secretary under subsections (a)(2)(B) and (d) of section 101.

“(6) Copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title.

“(7) Any other information deemed relevant by the Secretary.”

(e) PERMITS.—Section 304 (16 U.S.C. 1416) is amended to read as follows:

“SEC. 304. PERMITS.

“(a) IN GENERAL.—(1) Consistent with section 302, the Secretary is authorized to issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Sec-

retary shall prescribe such procedures as are necessary to carry out this subsection, including, but not limited to, requiring the submission of—

“(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

“(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 302, with respect to each vessel.

“(2) The Secretary is authorized to charge a fee for issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available, subject to appropriations, to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in issuing permits under this section.

“(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

“(b) PERMIT SANCTIONS.—(1) In any case in which—

“(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 305;

“(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 305; or

“(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue, the Secretary may—

“(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

“(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

“(iii) deny such permit; or

“(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

“(2) In imposing a sanction under this subsection, the Secretary shall take into account—

“(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

“(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

“(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

“(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

“(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.”.

(f) PROHIBITIONS.—Section 305 is repealed and section 307 (16 U.S.C. 1417) is redesignated as section 305, and amended as follows:

(1) In subsection (a):

(A) By amending paragraph (1) to read as follows:

“(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated steps, in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;”.

(B) By amending paragraph (2) to read as follows:

“(2) except in accordance with this title and regulations issued pursuant to this title as provided for in subsection 101(e), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net

on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean; or”.

(C) By amending paragraph (3) to read as follows:

“(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);”.

(2) In subsection (b)(2), by inserting “(a)(5) and” before “(a)(6)”.

(3) By striking subsection (d).

(g) REPEAL.—Section 306 is repealed and section 308 (16 U.S.C. 1418) is redesignated as section 306, and amended by striking “303” and inserting in lieu thereof “302(d)”.

(h) CLERICAL AMENDMENTS.—The table of contents in the first section of the Marine Mammal Protection Act of 1972 is amended by striking the items relating to title III and inserting in lieu thereof the following:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

“Sec. 301. Findings and policy.

“Sec. 302. Authority of the Secretary.

“Sec. 303. Reports by the Secretary.

“Sec. 304. Permits.

“Sec. 305. Prohibitions.

“Sec. 306. Authorization of appropriations.”.

SEC. 6. AMENDMENTS TO THE TUNA CONVENTIONS ACT.

(a) MEMBERSHIP.—Section 3(c) of the Tuna Conventions Act of 1950 (16 U.S.C. 952(c)) is amended to read as follows:

“(c) at least one shall be either the Director, or an appropriate regional director, of the National Marine Fisheries Service; and”.

(b) ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.—Section 4 of the Tuna Conventions Act of 1950 (16 U.S.C. 953) is amended to read as follows:

“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

“The Secretary, in consultation with the United States Commissioners, shall:

“(1) Appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations. The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

“(2) Appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations. The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean. In addition, the Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include each of the following:

“(A) The review of data from the Program, including data received from the Inter-American Tropical Tuna Commission.

“(B) Recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research.

“(C) Recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments.

“(D) Consulting with other experts as needed.

“(E) Recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation’s National Scientific Advisory Committee (or equivalent).

“(3) Establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data. The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.

“(4) Fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.”.

SEC. 7. EQUITABLE FINANCIAL CONTRIBUTIONS.

It is the sense of the Congress that each nation meeting the comparability requirements under section 101(a)(2)(B) of the Marine Mammal Protection Act of 1972, as amended by this Act, should contribute an equitable amount to the expenses of the Inter-American Tropical Tuna Commission. Such contributions shall be proportionate to the number of purse seine vessels from that nation fishing for tuna in the eastern tropical Pacific Ocean.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect upon certification by the Secretary of State to the Congress that a binding resolution of the Inter-American Tropical Tuna Commission, or another legally binding instrument, establishing the International Dolphin Conservation Program has been adopted and is in effect.

PURPOSE OF THE BILL

The purposes of H.R. 2823 are to legislatively implement in domestic law the Declaration of Panama, to recognize that significant reduction in dolphin mortality have been achieved by nations fishing for tuna in the eastern tropical Pacific Ocean, and to eliminate import bans on tuna from those nations that are certified to be in compliance with the International Dolphin Conservation Program.

BACKGROUND AND NEED FOR LEGISLATION

There are many fishing experts who believe that the eastern tropical Pacific Ocean (ETP), an area of more than five million square miles and stretching from southern California to Chile, contains one of the world’s most important fisheries. It is here that large and valuable stocks of yellowfin tuna (*Thunnus albacores*) reside. Development of this fishery began in the early 1900s, mostly by baitboats from the United States. By the 1950s, however, the United States fleet was suffering economic hardship due to foreign competition and the low efficiency of baitboat fishing. Efficiency more than doubled in 1957, when the first U.S. baitboat was converted to purse-seine fishing, making use of newly developed synthetic nets and power blocks (a mechanism used to retrieve the net). Within a few years, all the baitboats had been converted to purse-seine vessels.

In the mid-1970s, the U.S. fleet consisted of more than 150 vessels and accounted for about 70 percent of the fishing capacity in the ETP. Since then, the fleet has steadily decreased due to foreign competition and increasing regulatory pressures, and now has largely been replaced by foreign fleets. While the U.S. fleet was at 106 vessels in 1976, by 1993 only eight vessels remained, while the foreign fleet increased to about 89 vessels.

For unknown reasons, schools of large yellowfin tuna associate with schools of dolphins. By sighting the surfacing dolphins, fishermen are able to locate these large tuna. Since the late 1950s, fishermen have deployed large purse-seine nets around schools of dolphins to harvest the tuna swimming below, a routine referred to as “fishing on dolphins,” or “setting on dolphins”. Fishermen now use improved techniques for hauling in the net that allows the encircled dolphins to escape by swimming over the upper edge of the net, but occasionally some become tangled in the net and are seriously injured or killed. This mortality of dolphins and the biological, economic, and political effects of programs developed to reduce dolphin mortality has been the subject of considerable debate over the years.

The yearly catch of yellowfin tuna in the ETP is greater than 300,000 short tons (600 million pounds) and, according to Inter-American Tropical Tuna Commission (IATTC) reports, the stock is capable of sustaining harvests at this level. Tuna caught by purse-seine “setting on dolphins” average 45 pounds per fish, are approximately 2.5 years old, and about half the fish are at spawning maturity. These large fish command a premium price and are of a superior quality compared with tuna caught by other harvest methods.

By catching tuna with the “setting on dolphin” fishing method, one of the interesting side effects is the lack of bycatch of other species. During the early history of this fishery, the dolphin mortality was estimated at 350,000 animals per year, but it is more likely that about half that number were actually killed. In recent years, great improvements have been realized in releasing the dolphins using a technique known as the “backing down procedure”. This technique allows the back edge of the net to sink below the surface and allows the dolphins to swim out of the net. The current level of dolphin mortality is less than 4,000 animals per year, a level considered to be below biological significance.

As an alternative to “setting on dolphins”, other methods of fishing include setting nets around tuna that have been attracted to floating objects (“log fishing”) or around free swimming schools of fish (“school fishing”). While these methods almost totally eliminate dolphin mortality, they may have other negative aspects. Recent studies of “log fishing” have shown that approximately 25 percent (by weight) of the harvest is bycatch. This bycatch consists of many species including, most significantly, billfish, sea turtles, sharks and immature yellowfin tuna. These juvenile tuna are dead by the time they are returned to the sea and this loss of a great number of immature tuna is considered, by some, to be a serious threat to sustaining population in the future. Also, compared to “setting on dolphins”, the catch per day is significantly less, the average weight per fish is much lower, the proportion of the smaller and less valuable skipjack tuna in the catch is greater, and the catch brings a significantly lower price.

While a few U.S. vessels continue to fish for tuna in the ETP using methods other than “setting on dolphins”, the majority of the vessels in the U.S. fleet have either been sold or reflagged under Central and South American registries or have moved to the western Pacific fishery where mid-depth trawling is the preferred method and is considered “dolphin-safe” under current U.S. law. Cur-

rently, the canned tuna market in the U.S. is served primarily from this fishery where the catch is largely skipjack tuna.

In addition to the effects on the number of U.S. vessels remaining in the fishery, those U.S. vessels which decided to leave the fishery and move to the western Pacific Ocean incurred costs amounted to almost \$1 million per vessel to regear for the fishery. Those vessels remaining in the fishery had been led to believe that the increase in market price for the tuna caused by consumer interest in the new "dolphin safe" label would make up for their reduced harvest. Unfortunately, sale of canned tuna in the U.S. dropped 20 to 25 percent since 1990.

DOMESTIC LAW PROTECTING DOLPHINS FROM EFFECTS OF TUNA FISHING

The Marine Mammal Protection Act (MMPA) was enacted in 1972 to protect marine mammals from the adverse effects of human activities. The law states in section 101(a)(2) that "marine mammals may be taken incidentally in the course of commercial fishing operations * * *" and "in any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. * * *"

During the 1984 reauthorization of the MMPA, the U.S. tuna industry and the environmental community raised concerns that the progress realized by the U.S. fleet in reducing dolphin mortality was being undermined by increased mortalities occurring in the foreign tuna fleet. Because the U.S. was the largest market for canned tuna, the MMPA was amended to require each nation wishing to export tuna to the U.S. to document that their adopted dolphin protection program was "comparable" to that of the U.S. and that the incidental mortality rate was "comparable" to that of the U.S. fleet. Without this documentation, an automatic embargo on the importation of yellowfin tuna would be invoked. The U.S. also prevented the export of tuna from those nations not meeting the comparability standard through third parties or "intermediary" nations.

The 1984 MMPA "comparable" amendments were not implemented until March of 1988 and, in the interim, dolphin mortality by foreign fleets increased steadily. In response, the MMPA was further amended in 1988, affecting both the U.S. fleet and foreign-flagged tuna fleets. These amendments included a prohibition on setting nets on dolphins at sundown, allowing the use of only the weakest explosive devices for herding dolphins and tuna, and the establishment of a skipper performance system.

In addition, the 1988 MMPA amendments gave specific guidance as to when a foreign dolphin protection program would be considered "comparable" to that of the United States. This guidance included remedial training for skippers with poor performance records, regulations comparable to those for U.S. vessels, and an observer program comparable to that of the U.S. fleet. Most important was that the per vessel annual dolphin mortality rate of any foreign fleet was to be less than 1.25 times that of the U.S. fleet.

Any nation not satisfying these conditions would be prevented from exporting tuna to the U.S. market.

On April 12, 1990, the Starkist Seafood Company announced its policy to discontinue purchase of any tuna caught in association with dolphin and began to label products with "dolphin-safe" labels. Almost immediately, Van Camp Seafood (Chicken of the Sea) and Bumble Bee endorsed this dolphin-safe policy. These companies accounted for about 80 percent of the canned tuna sold in the United States. This amount was further increased by several smaller suppliers who also chose to adopt the dolphin-safe policy.

Following this voluntary action, legislation was enacted as part of the Fishery Conservation Amendments of 1990 to codify criteria for labeling tuna and tuna products as dolphin-safe. To qualify as dolphin-safe, tuna caught in the ETP must have been caught either by a vessel too small to deploy nets around dolphins or, for larger vessels, the catch must be certified by a qualified observer that no "dolphin sets" were made for the entire fishing trip. Also, the 1990 Act specified that tuna caught in driftnets cannot qualify as dolphin-safe.

In August 1990, Mexico was embargoed under the 1988 provisions for not achieving comparability with the U.S. fleet. In response, Mexico requested consultations with the U.S. and, after bilateral consultations failed to reach an accord, requested that a panel be established under the General Agreement on Tariffs and Trade (GATT) to resolve this dispute. On September 3, 1991, the panel delivered its decision in favor of Mexico. The panel found that both the embargo of Mexican tuna and the provision in the MMPA dealing with intermediary nations were inconsistent with GATT. The GATT Council, however, did not immediately adopt the panel's findings and, therefore, the U.S. is technically not in violation of GATT. At present, Mexico has not reinstituted the challenge to the World Trade Organization, which is the successor organization to GATT.

In 1992, Congress enacted further amendments to the MMPA (Public Law 102-523) designed to promote international dolphin protection and to resolve the Mexican challenge. This legislation imposed a five-year moratorium on "setting on dolphins" and, in the interim before the effective date of the moratorium, it lifted the embargoes against all nations that made a declared commitment to implement the moratorium and to take other steps to reduce dolphin mortality. After making these commitments, nations that failed to honor the agreement were subject to a reinstatement of the yellowfin tuna embargo and an import ban on other fish products. To date, no nation has formally declared their intent to honor the provisions of this Act.

In 1994, the U.S. put into effect embargoes of tuna from Columbia, Mexico, Panama, Vanuatu and Venezuela, and intermediary nation embargoes against Costa Rica, Italy, and Japan.

THE LA JOLLA AGREEMENT

At about the same time, representatives from a number of governments were attending a meeting sponsored by the Inter-American Tropical Tuna Commission (IATTC) in La Jolla, California, (April 21-23, 1992) to prepare and adopt a resolution with the goal

of reducing dolphin mortality in the ETP fishery to levels approaching zero. The governments in attendance were Columbia, Costa Rica, Ecuador, Mexico, Nicaragua, Panama, Spain, the United States, Vanuatu and Venezuela. The limits established for dolphin mortality would diminish each year, and by 1999 are to be below 5,000, a number less than 0.1 percent of the estimated total dolphin population.

Compliance with the agreement was to be assured by assigning each vessel a dolphin mortality limit (DML) and by requiring an observer on each vessel. When the DML limit for a vessel was reached, that vessel would be required to discontinue "setting on dolphins" for the remainder of the year. In 1994, 75 vessels under the La Jolla Agreement requested and received individual dolphin mortality limits (DML). Only three of those vessels were from the United States. In 1995, 81 vessels requested DMLs, none of which were U.S. vessels. To date, the signatories have continued to operate under this agreement.

DELETERIOUS EFFECTS OF CURRENT LAW

In recent years, studies on the tuna fishery have shown an alarming unintended effect of the U.S. law. Meant to discourage the use of the encirclement technique, alternative fishing practices were shown to have a negative effect on other marine species including sea turtles, sharks, billfish and juvenile tunas. The two primary methods of fishing "dolphin safe" are the school set and the log set techniques. While both methods do minimize dolphin mortality, there has been shown to be some dolphin mortality in both methods of fishing. The bycatch of other marine species associated with these two fishing techniques is significantly higher than the bycatch associated with the encirclement technique. School sets generate approximately 10 times the amount of bycatch and log sets generate approximately 100 times the bycatch of juvenile tunas and other marine species. In short, while current law focuses on techniques of reducing dolphin bycatch, the alternative fishing practices exacerbate fishing pressures on other sensitive marine populations.

The goal of each revision to the dolphin-specific provisions of the MMPA was to further reduce dolphin mortality in the ETP. The effectiveness of each of these changes has been questioned. Though the embargo provisions have been credited with bringing about international cooperation, recent studies have shown that fishing effort using the encirclement technique have remained fairly stable, approximately 50 percent of current effort in the fishery, despite the embargo provisions. It is important to note that while dolphin stocks decreased rapidly during the 1970s, the population levels have remained relatively stable during the last decade.

Many argue that the greatest contribution to the reduction in dolphin mortality was the development and implementation of the voluntary La Jolla agreement. As discussed above, this agreement established a program of observer coverage, gear modifications, and technological changes in former fishing practices which led to drastic reductions in dolphin mortality. It is important to note that none of the dolphin stocks in the ETP are considered endangered. In fact, the National Marine Fisheries Service (NMFS) notes that

the rebuilding of one of the two stocks which are considered depleted, the northeastern spotted dolphin, will not be adversely affected by the continued practice of encircling dolphins. In fact, NMFS estimates that rebuilding of this stock to historical levels would take 27 years under current conditions, which includes the 50 percent effort directed on dolphin stocks. With no effort directed on dolphin sets, NMFS estimates the rebuilding would take 28½ years.

As currently drafted, the U.S. "dolphin safe" definition restricts the use of certain gear types, rather than basing the definition on a mortality standard. The current definition prohibits the use of driftnets and the practice of encircling dolphin schools. A study presented at the 1994 International Whaling Commission highlighted a gillnet fishery in Sri Lanka which harvested tuna and had an estimated mortality of between 8,000 and 11,000 small cetaceans per year. Because the fishery did not employ the use of either prohibited fishing practice, this tuna could, under current law, be imported as "dolphin safe" tuna. H.R. 2823 modifies the "dolphin safe" definition to base it on an actual mortality-based standard rather than merely a gear restriction.

A concern was raised at several hearings on the effects the encirclement will have on the reproductive ability of dolphins in the fishery. While some preliminary work has been conducted, there is little, or no evidence, to indicate that there will be any long-term effect on the populations. Despite the lack of evidence, H.R. 2823 authorizes an additional \$1 million to continue to study this possibility.

DECLARATION OF PANAMA

In October 1995, 12 nations, including the United States, met in Panama to develop a binding international agreement to protect dolphins and other species in the ETP. The twelve nations involved in the development of this agreement were: Belize, Columbia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, Venezuela and the United States. Five environmental organizations were also instrumental in developing this agreement: the Center for Marine Conservation, World Wildlife Fund, Greenpeace, National Wildlife Federation and the Environmental Defense Fund.

These meetings resulted in the Declaration of Panama, signed by all 12 nations on October 4, 1995. The Panama Declaration would:

- Establish a permanent mortality limit with the goal of reducing dolphin mortality to zero for all participants in the fishery. (An increase in the number of vessels entering the fishery will not result in an increase in the overall cap);

- establish mortality caps for individual species of dolphin found in the ETP;

- establish per vessel mortality caps to provide for individual vessel accountability;

- provide greater protection for other marine species currently at risk from bycatch caused by certain harvesting techniques;

- increase enforcement and monitoring systems to ensure compliance by signatory nations and the vessels flagged by these

nations, including the use of mandatory observer coverage on all vessels; and

continue scientific assessment and review of the progress toward meeting the goals of zero dolphin mortality, and to review the status of individual dolphin stocks.

H.R. 2823 would implement the Declaration of Panama under U.S. law.

COMMITTEE ACTION

On June 22, 1995, the Subcommittee on Fisheries, Wildlife and Oceans held a hearing on tuna fishing in the ETP and the effect of these fishing practices on dolphin populations. The Subcommittee heard testimony from the Administration, Members of Congress, IATTC, the American Tunaboat Association, the American Tunaboat Owners Coalition, the National Fisheries Institute, the Center for Marine Conservation, the Fishermen's Coalition and Earth Island Institute.

H.R. 2823 was introduced on December 21, 1995, by Congressman Wayne Gilchrest (R-MD). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans.

On Thursday, February 29, 1996, the Subcommittee on Fisheries, Wildlife and Oceans conducted a hearing on H.R. 2823 the International Dolphin Conservation Program Act, and a related bill. Testimony was heard from Members of Congress, representatives from the Department of State, the Department of Commerce, IATTC, National Academy of Sciences, NMFS, the Center for Marine Conservation, Greenpeace International, the American Tunaboat Owners Coalition, the Dolphin Safe/Fair Trade Campaign, the Public Citizen/Citizens Trade Campaign and other public witnesses.

On April 18, 1996, the Subcommittee met to mark up H.R. 2823. Congressman Gilchrest offered an amendment in the nature of a substitute. Congressman George Miller (D-CA) offered a substitute to the Gilchrest amendment, which failed on a rollcall vote of 6-9, as follows:

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Saxton, (Chairman)		X	.....	Mr. Studds	X	.....	.....
Mr. Young		X	.....	Mr. Miller	X	.....	.....
Mr. Tauzin	Mr. Gejenson	X	.....	.....
Mr. Gilchrest		X	.....	Mr. Ortiz		X	.....
Mr. Torkildsen		X	.....	Mr. Farr	X	.....	.....
Mrs. Smith		X	.....	Mr. Pallone	X	.....	.....
Mr. Jones		X	.....	Mr. Kennedy	X	.....	.....
Mr. Metcalf		X	.....			
Mr. Longley		X	.....			

Congressman Sam Farr (D-CA) offered an amendment to change the "dolphin safe" definition; the amendment failed by a rollcall vote of 6-10, as follows:

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Saxton, (Chairman)		X	.....	Mr. Studds	X	.....	.....
Mr. Young		X	.....	Mr. Miller	X	.....	.....
Mr. Tauzin		X	.....	Mr. Gejenson	X	.....	.....

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Gilchrest		X	.....	Mr. Ortiz		X	.....
Mr. Torkildsen		X	.....	Mr. Farr	X		.....
Mrs. Smith		X	.....	Mr. Pallone	X		.....
Mr. Jones		X	.....	Mr. Kennedy	X		.....
Mr. Metcalf		X	.....			
Mr. Longley		X	.....			

The Gilchrest amendment in the nature of a substitute was adopted by a rollcall vote of 10–6, as follows:

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Saxton, (Chairman)	X		.....	Mr. Studds		X	.....
Mr. Young	X		.....	Mr. Miller		X	.....
Mr. Tauzin	X		.....	Mr. Gejdenson		X	.....
Mr. Gilchrest	X		.....	Mr. Ortiz	X		.....
Mr. Torkildsen	X		.....	Mr. Farr		X	.....
Mrs. Smith	X		.....	Mr. Pallone		X	.....
Mr. Jones	X		.....	Mr. Kennedy		X	.....
Mr. Metcalf	X		.....			
Mr. Longley	X		.....			

The bill was then ordered favorably reported to the Full Committee by voice vote.

On May 8, 1996, the Full Resources Committee met to consider H.R. 2823. Congressman Gerry Studds (D–MA) offered an amendment to delay the effective date of any changes to the “dolphin safe” labeling requirements and a modification to the “dolphin safe” definition dealing with the gillnet fishery in Sri Lanka. By unanimous consent the amendment was divided, with the amendment to delay the effective date of the labeling requirements being defeated by rollcall vote of 10–23, as follows:

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Young (Chairman)		S	.....	Mr. Miller	X		.....
Mr. Tauzin	Mr. Markey .....			.....
Mr. Hansen	Mr. Rahall .....			.....
Mr. Saxton		X	.....	Mr. Vento	X		.....
Mr. Gallegly		X	.....	Mr. Kildee	X		.....
Mr. Duncan		X	.....	Mr. Williams .....			.....
Mr. Hefley		X	.....	Mr. Gejdenson .....			.....
Mr. Doolittle		X	.....	Mr. Richardson .....			.....
Mr. Allard		X	.....	Mr. DeFazio .....			.....
Mr. Gilchrest		X	.....	Mr. Faleomavaega	X		.....
Mr. Calvert		X	.....	Mr. Johnson .....			.....
Mr. Pombo	Mr. Abercrombie	X		.....
Mr. Torkildsen		X	.....	Mr. Studds	X		.....
Mr. Hayworth		X	.....	Mr. Ortiz		X	.....
Mr. Cremeans		X	.....	Mr. Pickett		X	.....
Mrs. Cubin		X	.....	Mr. Pallone	X		.....
Mr. Cooley	Mr. Dooley .....			.....
Mrs. Chenoweth		X	.....	Mr. Romero-Barceló	X		.....
Mrs. Smith		X	.....	Mr. Hinchey .....			.....
Mr. Radanovich	Mr. Underwood .....			.....
Mr. Jones		X	.....	Mr. Farr	X		.....
Mr. Thornberry		X	.....	Mr. Kennedy	X		.....
Mr. Hastings		X	.....			
Mr. Metcalf				
Mr. Longley		X	.....			
Mr. Shadegg		X	.....			
Mr. Ensign		X	.....			

The second part of the Studds amendment was adopted by voice vote with an understanding that technical changes would have to be agreed to later. Congressman George Miller (D-CA) offered an amendment to include a “Sense of the Congress” provision that each nation meeting the comparability standard under section 101 of the MMPA should contribute an equitable amount for the expenses of the IATTC, and to prohibit the U.S. from contributing to the expenses of the IATTC more than a percentage based on the number of purse seine vessels registered in the U.S. and fishing for tuna in the ETP. Congressman Gilchrest offered an amendment to the Miller amendment to strike the second part which would have changed the method of calculating the contributions of member nations for expenses of the IATTC. The Gilchrest amendment to the Miller amendment was adopted by a rollcall vote of 17–14–1, as follows:

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Young (Chairman)	X	.....	.....	Mr. Miller .....	.....	X	.....
Mr. Tauzin .....	.....	.....	.....	Mr. Markey .....	.....	.....	.....
Mr. Hansen .....	.....	.....	.....	Mr. Rahall .....	.....	X	.....
Mr. Saxton	X	.....	.....	Mr. Vento .....	.....	X	.....
Mr. Gallegly	X	.....	.....	Mr. Kildee .....	.....	X	.....
Mr. Duncan .....	.....	.....	.....	Mr. Williams .....	.....	.....	.....
Mr. Hefley .....	.....	X	.....	Mr. Gejdenson .....	.....	.....	.....
Mr. Doolittle	X	.....	.....	Mr. Richardson	X	.....	.....
Mr. Allard	X	.....	.....	Mr. DeFazio .....	.....	X	.....
Mr. Gilchrest	X	.....	.....	Mr. Faleomavaega .....	.....	X	.....
Mr. Calvert	X	.....	.....	Mr. Johnson .....	.....	.....	.....
Mr. Pombo	X	.....	.....	Mr. Abercrombie .....	.....	.....	.....
Mr. Torkildsen .....	.....	.....	.....	Mr. Studds .....	.....	X	.....
Mr. Hayworth	X	.....	.....	Mr. Ortiz .....	.....	X	.....
Mr. Cremeans	X	.....	.....	Mr. Pickett .....	.....	X	.....
Mrs. Cubin	X	.....	.....	Mr. Pallone .....	.....	X	.....
Mr. Cooley .....	.....	.....	.....	Mr. Dooley .....	.....	.....	.....
Mrs. Chenoweth	X	.....	.....	Mr. Romero-Barceló .....	.....	X	.....
Mrs. Smith	X	.....	.....	Mr. Hinchey .....	.....	.....	.....
Mr. Radanovich	X	.....	.....	Mr. Underwood .....	.....	.....	.....
Mr. Jones	X	.....	.....	Mr. Farr .....	.....	X	.....
Mr. Thornberry .....	.....	.....	.....	Mr. Kennedy .....	.....	X	.....
Mr. Hastings .....	.....	.....	.....	
Mr. Metcalf .....	.....	.....	.....	
Mr. Longley .....	.....	.....	.....	
Mr. Shadegg	X	.....	.....		
Mr. Ensign .....	.....	.....	X				

The Miller amendment as amended was then adopted by voice vote. The bill, as amended was then ordered favorably reported to the House of Representatives by voice vote in the presence of a quorum.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; references

This Act may be cited as the “International Dolphin Conservation Program Act”.

Amendments in the Act are to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

Section 2. Purpose and findings

The purpose of this Act is to give effect to the Declaration of Panama, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean. Another purpose of the Act is to recognize the significant reductions in dolphin mortality associated with that fishery by nations fishing for tuna and to eliminate the ban on imports of tuna from those nations in compliance with the International Dolphin Conservation Program.

The findings of this Act are: (1) that nations that fish in the ETP yellowfin tuna fishery have reduced dolphin mortality from hundreds of thousands annually to fewer than 5,000 annually; (2) that provisions in the MMPA that impose a ban on the imports of tuna from nations fishing in the ETP have served as an incentive to reduce dolphin mortalities; and (3) that tuna canners and processors of the United States have led the tuna products industry to promote a dolphin-safe tuna market.

Section 3. Definitions

The term "International Dolphin Conservation Program" has been defined to mean the international program established by the agreement in La Jolla, California, in June 1992, as formalized, modified and enhanced by the Declaration of Panama, that: (1) requires the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the ETP not exceed 5,000, with the commitment to progressively reduce dolphin mortality to levels approaching zero through the setting of annual limits; (2) establishes a per-stock per-year mortality limit up to the year 2001 of between 0.2 percent and 0.1 percent of the minimum population estimate; (3) beginning in the year 2001, requires that the per-stock per-year mortality of dolphin not exceed 0.1 percent of the minimum population estimate; (4) requires that in the event the mortality limits are exceeded, all sets on dolphins shall cease; (5) establishes a per-vessel annual dolphin mortality limit consistent with the established per-year mortality caps; and (6) provides a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating all dolphin deaths.

The "Declaration of Panama" has been defined as the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

Section 4. Amendments to title I

Section 101 of the MMPA is amended to allow nations who comply with the International Dolphin Conservation Act to export yellowfin tuna harvested with purse seine nets in the ETP into the United States. The government of the exporting nation shall provide documentary evidence that: (1) the tuna or tuna products were not caught prior to the effective date of the International Dolphin Conservation Program Act; (2) the tuna or tuna products were harvested after the effective date of the International Dolphin Conservation program (IDCP) by a harvesting nation that is either a member of the IATTC or is a nation that has initiated (and within six months completed) all steps necessary to become an IATTC member and has implemented the appropriate international obliga-

tions; (3) total dolphin mortality permitted under the IDCP will remain below 5,000 in the future, with the goal of reducing dolphin mortality to levels approaching zero through the setting of annual limits; and 4) that the participating nation has not prevented any other nation from participating in the IATTC.

Section 101 of the MMPA is further amended to include two new subsections. Subsection (d) requires the Secretary of Commerce to reject a government's documentary evidence if that nation does not authorize the IATTC to release sufficient information to the Secretary to determine the nation's compliance with the IDCP. The Secretary may also refuse to accept the documentary evidence, if the nation consistently fails to take enforcement actions on violations that diminish the effectiveness of the IDCP or the harvesting nation is not in compliance with the IDCP. Subsection (e) exempts the provisions of this Act from applying to a United States citizen, when the citizen incidentally takes a marine mammal outside of the United States Exclusive Economic Zone and is employed on a foreign fishing vessel of a harvesting nation in compliance with the IDCP.

Section 104(h) is amended to allow the Secretary of Commerce to issue an annual permit to a United States vessel for the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the ETP. The permits shall be governed by section 304, subject to regulations issued through section 302.

Section 108 is amended to allow the Secretary to initiate discussions: 1) to expeditiously negotiate revisions to the Convention for the Establishment of an Inter-American Tropical Tuna Commission which will incorporate conservation and management provisions agreed to by nations which have signed the Declaration of Panama; and 2) with those countries likely to participate in the IDCP, to identify alternative sources of funding to ensure that needed research and other measures benefiting effective protection of dolphins, other marine species, and the marine ecosystem.

Section 110 repeals a National Academy of Sciences review.

Paragraph 1 of section 901(d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)(1)) is amended to make it a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term "dolphin-safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains the following: tuna harvested on the high seas by a vessel engaged in driftnet fishing; tuna harvested from the ETP and outside of the ETP using purse seine nets in a manner not considered dolphin-safe under paragraphs (2) and (3); or tuna harvested by a vessel engaged in any other fishery with a regular and significant incidental mortality of marine mammals.

Paragraph (2) of subsection (d) of the Dolphin Protection Consumer Information Act is amended to define dolphin-safe tuna as a tuna product that contains tuna harvested in the ETP by a vessel not capable of deploying its purse seine nets on or to encircle

dolphins, or which deployed purse seine nets, but with certification that no dolphins died in the set.

Subsection (d) is further amended by requiring that tuna harvested outside the ETP by vessels using purse seine nets is dolphin-safe if it is certified that the nets were not intentionally deployed on dolphins or, in a fishery which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, it is accompanied by a written statement by the captain and an observer certifying that no purse seine net was deployed on or used to encircle marine mammals. No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, except as dolphin-safe in accordance with this subsection.

Subsection (f) of the Dolphin Protection Consumer Information Act is amended to establish a domestic and international tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d).

Section 5. Amendments to title III

Title III of the MMPA is renamed the International Dolphin Conservation Program.

The findings in section 301 are amended to recognize that nations harvesting yellowfin tuna in the ETP have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality; recognize that the IDCP will assure that the existing trend of reduced dolphin mortality continues; recognize that the goal of eliminating dolphin mortality continues to be a priority; and to ensure that the U.S. market does not act as an incentive to the harvest of tuna using purse seine nets not in compliance with the IDCP.

Section 302 is amended to require the Secretary of Commerce to issue regulations, not later than three months after the date of enactment, to implement the International Dolphin Conservation Program. In developing the regulations under this section, the Secretary will consult with the Marine Mammal Commission and the U.S. Commissioners to the IATTC.

These regulations shall include provisions requiring observers on each vessel; requiring the use of the backdown method or other equally effective procedures; prohibiting the intentional deployment of nets in violation of the IDCP; requiring the use of special equipment; ensuring that the backdown procedure or deployment of nets begin no later than 30 minutes after sundown; banning the use of explosive devices; establishing per vessel mortality limits, total dolphin mortality limits, and per stock per year mortality limits; preventing the intentional deployment of nets on dolphins after reaching the total dolphin mortality limits, the per stock or vessel mortality limits; preventing fishing by vessels not assigned a vessel mortality limit; allowing for the authorization of experimental fishing operations; authorizing fishing within the area covered by the IDCP by vessels of the U.S. without specific requirements under special conditions prescribed by the Secretary; and containing other such necessary restrictions or requirements as determined by the Secretary.

If the Secretary determines, using the best scientific information available, that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall prescribe emergency regulations and notify, along with recommendations on actions necessary to reduce the adverse impacts, to the IATTC.

The Secretary shall, in cooperation with the nations participating in the IDCP and the IATTC, undertake or support appropriate scientific research to further the goals of the Program. The research may include but is not limited to: devising cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals; devising cost-effective fishing methods for mature yellowfin tuna without deployment of nets on dolphins or other marine mammals; carrying out a stock assessment of those marine mammal species and stocks taken in the purse seine fishery for yellowfin tuna in the ETP; studying the effects of chase and encirclement on the health and biology of dolphin and individual dolphin populations incidentally taken in the course of purse seine fishing in the ETP and determining the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the ETP yellowfin tuna fishery. The results of the research in this section shall be included in the report required in section 303.

Section 303 of the MMPA is amended to have the Secretary submit an annual report to Congress which includes: the results of research conducted in section 302; a description of the status and trends of stocks of tuna; a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and other nontarget species; a description of activities of the IDCP and the efforts of the U.S. in support of the Program's goals and objectives; an assessment of the effectiveness of the IDCP; and any other information the Secretary deems relevant.

Section 304 is amended to authorize the Secretary to issue permits to a vessel of the United States authorizing participation in the IDCP. This may include issuing a permit to the person actually in charge of and controlling the fishing operation of the vessel. The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The levels of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit.

After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the ETP without a valid permit. Permits may be sanctioned if a vessel has been used in the commission of an act in violation of section 305, or the owner, operator, or any other person who has applied for or been issued a permit under this section has acted in violation of section 305. The Secretary may also revoke, suspend, deny, or impose conditions or restrictions on a permit for any person who has not paid and is overdue on a civil penalty or criminal fine.

When imposing sanctions under this subsection the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act for which the sanction is imposed, and

with respect to the violator, the degree of culpability, any history or prior offenses, and other matters as justice requires. No sanctions will be imposed unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed. Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. The Secretary shall reinstate the permit upon payment of the penalty of fine and any interest.

Section 305 of the MMPA is repealed, section 307 is redesignated as 305, and is amended to prohibit any person from selling, transporting, or shipping, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the IDCP by a country that is a member of the IATTC, or has initiated steps to join the IATTC.

The amendments to redesignated MMPA section 305 also prohibit, except in accordance with this title, any person or vessel subject to the jurisdiction of the United States from intentionally deploying a purse seine net on or encircling any marine mammal in the course of tuna fishing in the ETP or for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2).

Finally, section 5 of the bill repeals MMPA section 306, redesignates section 308 as section 306, and further amends that section by striking “303” and inserting “302(d)”.

Section 6. Amendments to the Tuna Conventions Act

Section 3 of the Tunas Conventions Act is amended to require at least one IATTC commissioner be the Director or an appropriate regional director of the NMFS.

Section 4 of the Tuna Conventions Act is amended to have the Secretary, in consultation with the United States Commissioners, appoint a General Advisory Committee and a Scientific Advisory Subcommittee. The General Advisory Committee will be composed of not less than five nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations. The Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations and regulations of the commissions.

The Scientific Advisory Subcommittee will be composed of not less than five nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations. The Subcommittee shall advise the General Advisory Committee and the United States Commissioners on matters including the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the ETP; and the long-term conservation and management of stocks of living marine resources in the ETP. The Subcommittee, as requested by the Committee, the United States Commissioners, or the Secretary, will perform functions and pro-

vide assistance required by formal agreements entered into by the United States for this fishery, including the IDCP. The functions may include: review of data from the Program, including data from the IATTC; recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research; recommendations concerning scientific reviews and assessments required under the Program; consultation with other experts; recommendations of measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or equivalent).

Section 7. Equitable financial contributions

This section adds a new Sense of the Congress provision that each nation meeting the comparability requirements under section 101(a)(2)(B) should contribute an equitable amount to the expenses of the IATTC.

Section 8. Effective date

This Act and the amendments made by this Act shall take effect upon the certification by the Secretary of State to Congress that a binding resolution of the IATTC, or another legally binding instrument, establishing the IDCP has been adopted and is in effect.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2823 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2823. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of

the Congressional Budget Act of 1974, H.R. 2823 does not contain any new budget authority, spending authority, credit authority, or a decrease or increase in tax expenditures. The bill would lead to a decrease in appropriated spending of approximately \$1 million in fiscal year 1998 and \$2 million in fiscal years 1999–2002. The bill also decreases direct spending beginning in fiscal year 1997 by increasing offsetting receipts of less than \$100,000 a year from 1997–2002 from permit fees. In addition, H.R. 2823 would increase governmental receipts by less than \$500,000 annually from tariffs on imported canned tuna.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2823.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2823 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 22, 1996.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2823, the International Dolphin Conservation Program Act.

Enacting H.R. 2823 could affect both direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill. If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2823.
2. Bill title: International Dolphin Conservation Program Act.
3. Bill status: As ordered reported by the House Committee on Resources on May 8, 1996.
4. Bill purpose: H.R. 2823 would modify the protection of marine mammals, including dolphins, in connection with tuna harvesting. The bill would recognize and incorporate into law many of the provisions of the Declaration of Panama, signed October 4, 1995, by the United States and the governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, And Venezuela. The Declaration of Panama addresses the protection of dolphins and other species, and the conservation and management of tuna, in the eastern tropical Pacific Ocean

(ETP). Several provisions of the bill would address the use of purse seines in tuna fishing. Purse seines are large nets that encircle tuna and are then drawn shut like a purse. Specifically, the bill would:

- declare that it is U.S. policy to support the International Dolphin Conservation Program (IDCP) operated under the auspices of the Inter-American Tropical Tuna Commission (IATTC);

- state that it is the sense of the Congress that U.S. contributions to the IATTC shall be proportionate to the number of U.S. purse seine vessels fishing for tuna in the ETP;

- eliminate the current ban by the Secretary of the Treasury on imports of yellowfin tuna from countries whose vessels catch tuna in the ETP using a procedure known as “setting on dolphins” by allowing tuna imports from those nations complying with the IDCP;

- amend the Marine Mammal Protection Act of 1972 to allow the Department of Commerce (DOC) to issue permits to U.S. fishermen authorizing the incidental taking of dolphins during commercial yellowfin tuna harvesting;

- limit the number of dolphins that can be killed by tuna fishing in the ETP to 5,000 annually, with the mortality limit apportioned among various dolphin types—but the limit for each type could not exceed 0.2 percent of the minimum estimated abundance of that type through 2000, and 0.1 percent of that minimum in 2001 and thereafter;

- require U.S. vessels fishing for tuna in the ETP to obtain individual, annual permits from the Secretary of Commerce to authorize their participation in the IDCP, as opposed to certificates of inclusion in one umbrella permit as under current law, and authorize the Secretary to charge a fee to cover the administrative costs of that permit;

- authorize to be appropriated to the DOC \$1 million for scientific research on dolphin conservation; and

- amend the Dolphin Protection Consumer Information Act by redefining tuna that may be labeled “Dolphin Safe” as that caught in any set of a purse seine net in which no dolphins were killed, regardless of whether any dolphins were encircled as part of the tuna harvest. Under the bill, tuna would be determined to be “dolphin safe” on a set by set basis, rather than by vessel-trip as under current law.

5. Estimated cost to the Federal Government: CBO estimates that enacting H.R. 2823 would lead to a decrease in appropriated spending of about \$1 million in fiscal year 1998 and \$2 million for fiscal years 1999–2002, assuming appropriations consistent with the bill’s provisions. In addition, CBO estimates that enacting H.R. 2823 could decrease direct spending beginning in fiscal year 1997 by generating additional offsetting receipts from fees on fishing permits. We estimate that any new permit fees would total less than \$100,000 a year over the 1997–2002 period. Finally, based on information from the International Trade Commission (ITC), CBO estimates that H.R. 2823 would increase governmental receipts by less than \$500,000 annually. The following table summarizes the estimated budgetary impact of H.R. 2823.

[By fiscal years, in millions of dollars]

	1997	1998	1999	2000	2001	2002
CHANGES IN SPENDING SUBJECT TO APPROPRIATIONS						
Estimated authorization level		-1	-2	-2	-2	-2
Estimated outlays		-1	-2	-2	-2	-2
CHANGES IN DIRECT SPENDING AND REVENUES						
Direct Spending:						
Estimated budget authority	(1)	(1)	(1)	(1)	(1)	(1)
Estimated outlays	(1)	(1)	(1)	(1)	(1)	(1)
Revenues:						
Estimated revenues	(1)	(1)	(1)	(1)	(1)	(1)

¹ Less than \$500,000.

The budgetary impact on federal spending of this bill falls within budget function 300.

Basis of estimate

Discretionary spending

Assuming appropriations consistent with the bill, enacting H.R. 2823 would result in net reductions of about \$1 million in appropriated spending in fiscal year 1998 and about \$2 million per year for fiscal years 1999–2002. This estimated change represents an increase of about \$1 million for the Department of Commerce in fiscal year 1998, and a decrease of about \$2 million per year for the Department of State over the 1998–2002 period.

H.R. 2823 would authorize the appropriation of \$1 million to be used by the DOC's National Marine Fisheries Service to support scientific research on dolphin conservation. We estimate outlays of about \$1 million in fiscal year 1998, assuming appropriation of the authorized amount.

The bill also states that it is the sense of the Congress that each nation meeting the comparability requirements of the Marine Mammal Protection Act should contribute to the expenses of the IATTC in amounts proportionate to the number of purse seine vessels from that nation harvesting tuna in the ETP. The ETP administers the International Dolphin Conservation Program and employs the international observers currently required on all tuna boats operating in the ETP. Currently, the Department of State contributes about \$3 million annually to the IATTC. That amount represents about 90 percent of the contributions from all nations to the IATTC, and about 65 percent of the IATTC's \$4.5 million budget. Since U.S. vessels represent less than 10 percent of those fishing for tuna in the ETP, the U.S. contribution to IATTC could decrease by more than \$2 million annually beginning in fiscal year 1998, if appropriations drop to a level consistent with the bill's goal of proportionate funding to the IATTC. If this drop in U.S. funding occurred, the IATTC treaty might have to be amended since it currently requires nations to contribute to the IATTC based on a different formula. H.R. 2823, however, would not by itself change the U.S. contribution to the IATTC.

Direct spending (including offsetting receipts)

Under current law, all U.S. vessels fishing for tuna in the ETP may operate under one permit issued to the American Tunaboat

Association in 1980 by the Secretary of Commerce. Individual vessels pay an annual fee to the DOC to renew certificates of inclusion under that permit. The current permit expires December 31, 1999. Over the last year, about five U.S. vessels have been harvesting tuna in the ETP under the permit.

Enacting H.R. 2823 would require U.S. vessels operating in the ETP to obtain individual permits from the Secretary of Commerce. Such permits would authorize vessels' participation in the IDCP and allow some incidental deaths of marine mammals from using purse seines in commercial fishing for yellowfin tuna. H.R. 2823 would authorize the Secretary to charge a permit fee, but such fees could not exceed the administrative costs of issuing permits. Income from fees could be spent, subject to appropriations, by the Under Secretary of Commerce for Oceans and Atmosphere for the expenses incurred in issuing permits.

Although enacting H.R. 2823 may not affect the fees paid per vessel, the bill could result in additional U.S. vessels seeking permit authority to operate in the ETP. Under current law, U.S. vessels in the ETP cannot set purse seine nets on dolphins in the course of fishing for tuna. The bill would permit this practice and allow for limited dolphin mortality in accordance with the international program as long as certain safeguards are adopted. This increase in flexibility could encourage additional U.S. vessels to operate in the ETP, where they would be subject to permit fees. We estimate, however, that any change in receipts from permit fees would total less than \$100,000 per year.

Revenues

Under current law, the Marine Mammal Protection Act of 1972 bans imports of yellowfin tuna from nations that fish for tuna in the eastern tropical Pacific Ocean. H.R. 2823 would eliminate the ban by allowing tuna imports from nations in compliance with the IDCP. Currently, fresh tuna imported to the U.S. is not subject to duty. However, the U.S. Customs Service collects about \$30 million annually from tariffs on canned tuna. Based on historical information provided by the ITC, prior to the current ban less than 2 percent of the duties collected on canned tuna imports were from IDCP signatory nations. Therefore, CBO estimates that eliminating the ban on imports of tuna from these nations would not significantly increase governmental receipts.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting H.R. 2823 could affect both direct spending and governmental receipts, but that any change would be less than \$500,000 a year in both cases. The estimated pay-as-you-go impact is summarized in the following table.

(By fiscal years, in millions of dollars)

	1996	1997	1998
Changes in outlays	0	0	0
Change in receipts	0	0	0

8. Estimated impact on State, local, and tribal governments: The bill contains no intergovernmental mandates as defined by Public Law 104-4, and would not have a direct impact on the budgets of state, local, or tribal governments.

9. Estimated Impact on the private sector: H.R. 2823 would impose private-sector mandates, but the costs would not exceed the \$100 million annual threshold specified in Public Law 104-4. Private-sector mandates in this bill include changes in labeling of dolphin-safe tuna because of the requirement that for tuna to be labeled "dolphin safe," no dolphin deaths may occur. In addition, each tuna vessel in the ETP would be required to register for a dolphin mortality limit with the IATTC. U.S. tuna vessels fishing in the ETP also would be required to comply with tracking and verification procedures to separate dolphin-safe and dolphin-unsafe tuna.

Section 4 would amend the Dolphin Protection Consumer Information Act, and give the Secretary of Commerce authority to require certain vessels to provide observer certification in certain fisheries. Those fisheries are ones where tuna is harvested and the Secretary has identified a regular and significant incidental mortality or serious injury rate of marine mammals. In those fisheries the observers would have to certify that no marine mammals were killed, in order for that tuna to be labeled as dolphin-safe. Based on information obtained from industry and government sources, CBO does not expect the Secretary would use this authority for U.S.-registered vessels.

Other provisions of the bill, such as requiring permits to be obtained from the Secretary of Commerce for the incidental taking of marine mammals and for gear requirements, would codify existing National Oceanic and Atmospheric Administration regulations.

H.R. 2823 would lift the existing prohibition on U.S. vessels setting nets on dolphins in the ETP as long as vessels comply with all appropriate regulations. The bill also would lift the ban on the importation and sale of dolphin-unsafe tuna from countries participating in the International Dolphin Conservation Program. Overall, CBO estimates that enacting this bill would result in decreased costs to the private sector.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Victoria Heid and Gary Brown; Stephanie Weiner for revenues. State and Local Government Impact: Pepper Santalucia. Private Sector Impact: Amy Downs.

12. Estimate approved by: Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 2823 contains no intergovernmental mandates.

H.R. 2823 would impose private-sector mandates, but the costs would not exceed the \$100 million annual threshold specified in Public Law 104-4. As noted in the CBO report, above, overall costs would decrease to the private sector. A description of the mandates are included in the CBO report; direct compliance costs are expected to be minimal.

DEPARTMENTAL REPORTS

The Committee received favorable reports on H.R. 2823 from the Department of State on February 14, 1996, and the Department of Commerce on February 22, 1996. No other reports have been received on H.R. 2823.

U.S. DEPARTMENT OF STATE,
Washington, DC, February 14, 1996.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to your Committee's request for views on H.R. 2823, to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean.

The Administration strongly supports this legislation, which is crucial for the implementation of the Panama Declaration and the continued viability of the International Dolphin Conservation Program (IDCP), as well as the organization which runs it, the Inter-American Tropical Tuna Commission (IATTC). We consider that this legislation, as it is premised on a multilateral approach to dolphin conservation, is particularly constructive.

The work of the IATTC to conserve dolphins has been extremely successful. In the early years of the eastern tropical Pacific tuna fishery, as many as 500,000 dolphins were killed annually during fishing operations. With the adoption of the IDCP under the auspices of the IATTC in June of 1992, the success of this program has been dramatic. For the past three years, dolphin mortalities have been below 5,000 annually, a figure which is approximately five one-hundredths of one percent of the estimated 9.6 million dolphins in the eastern Pacific Ocean. The program is strictly enforced, with an observer on every vessel. Simply put, it is one of the best international fisheries programs anywhere in the world, and is serving as a model for other efforts to deal with difficult international marine conservation questions.

Recently, the countries participating in the IDCP negotiated improvements to the IATTC program with five major environmental organizations—Greenpeace, the Center for Marine Conservation, the World Wildlife Fund, the Environmental Defense Fund, and the National Wildlife Federation. In October, 1995, this new program was endorsed by 12 nations, including the United States, in a document called the Panama Declaration.

Before the strengthened dolphin protection agreement contemplated by the Panama Declaration can be implemented, changes in U.S. law to open our market to tuna caught with zero dolphin mortality occurring in the set must first be made. The pending legislation before your Committee, H.R. 2823, and its counterpart in the Senate, S. 1420, represent those necessary changes.

It is important for this legislation to be passed to ensure that the tremendous gains in dolphin protection achieved to date, and the efforts of the countries which achieved them, continue in the future. We urge quick action by the Committee and Congress to

enact this legislation in order that the implementation of the Panama Declaration can be fully realized. We look forward to working with the Committee as the bill moves through Congress.

The Office of Management and Budget advises that from the Standpoint of the Administration's program there is no objection to the submission of this report.

I hope this information is useful to you. Please do not hesitate to call if we can be of further assistance.

Sincerely,

WENDY R. SHERMAN,
Assistant Secretary, Legislative Affairs.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington DC, February 22, 1996.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am responding to your request for the views of the Administration on H.R. 2823. This bill would amend the Marine Mammal Protection Act (MMPA) to implement the International Dolphin Conservation Program in the eastern tropical Pacific Ocean (ETP).

The Administration strongly supports the Panama Declaration, and this legislation is crucial for the implementation of that Declaration. H.R. 2823 provides for the continued viability of the International Dolphin Conservation Program (IDCP), as well as the Inter-American Tropical Tuna Commission (IATTC), which runs the IDCP.

The IATTC has been very successful in its efforts to protect dolphins in the ETP yellowfin tuna purse seine fishery. Only a decade ago, dolphin mortality incidental to fishing by the international yellowfin tuna purse seine fleet in the ETP was 130,000 annually. Since adoption of the IDCP in June 1992, dolphin mortality has dropped dramatically. For the past three years, total annual dolphin mortality has been below five thousand. Five thousand dolphins represents approximately five one-hundredths of one percent of the 9.6 million dolphins in the ETP. The fishery is strictly monitored with an observer on every vessel. Simply put, the IDCP is one of the most successful international environmental programs in the world, and serves as a model for other efforts to deal with difficult international marine conservation issues.

The endorsement of the Panama Declaration in October of 1995, by 12 nations, including the United States, will further solidify and strengthen the IDCP. Five major environmental organizations (Greenpeace, Center for Marine Conservation, World Wildlife Fund, Environmental Defense Fund, and the National Wildlife Federation) helped to negotiate, and have endorsed, the Panama Declaration. The Declaration reaffirms the commitments and objectives of the IDCP to reduce progressively dolphin mortality in the ETP to levels approaching zero, with an ultimate goal of eliminating dolphin mortality in this fishery. In addition to these goals and objectives, the Panama Declaration would limit total annual mortality

for the international fishery to not more than 5,000 with a per stock maximum of not more than 0.2 percent of the minimum estimated abundance of the stock through the year 2000, and not more than 0.1 percent of the minimum estimated abundance of the stock starting in 2001. This will help ensure that all dolphin stocks in the ETP are protected from mortality levels which would have an unacceptable impact on individual population or stock growth rates.

Before the strengthened dolphin protection agreement contemplated by the Panama Declaration can be implemented, U.S. law needs to be amended to open our market to tuna caught in compliance with the newly strengthened regime. The enactment of H.R. 2823, and its companion bill S. 1420, will make these critical changes. This legislation should ensure that the tremendous gains in dolphin protection that have been achieved, and support of the countries which help to achieve them, will continue in the future.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

GINGER LEW.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

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* * * * *

[TITLE III—GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES

[Sec. 301. Findings and policy.

[Sec. 302. International agreements to establish global moratorium to prohibit certain tuna harvesting practices.

[Sec. 303. Research program.

[Sec. 304. Reviews, reports, and recommendations.

[Sec. 305. International commitments.

[Sec. 306. Permits for taking dolphins.

[Sec. 307. Prohibitions.

[Sec. 308. Authorization of appropriations.]

TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Sec. 301. Findings and policy.

Sec. 302. Authority of the Secretary.

Sec. 303. Reports by the Secretary.

Sec. 304. Permits.

Sec. 305. Prohibitions.

Sec. 306. Authorization of appropriations.

* * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) * * *

* * * * *

(28) *The term “International Dolphin Conservation Program” means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama, that requires—*

(A) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000, with the commitment and objective to progressively reduce dolphin mortality to levels approaching zero through the setting of annual limits;

(B) the establishment of a per-stock per-year mortality limit for dolphins, for each year through the year 2000, of between 0.2 percent and 0.1 percent of the minimum population estimate;

(C) beginning with the year 2001, that the per-stock per-year mortality of dolphin not exceed 0.1 percent of the minimum population estimate;

(D) that if the mortality limit set forth in subparagraph (A) is exceeded, all sets on dolphins shall cease for the fishing year concerned;

(E) that if the mortality limit set forth in subparagraph (B) or (C) is exceeded sets on such stock and any mixed schools containing members of such stock shall cease for that fishing year;

(F) in the case of subparagraph (B), to conduct a scientific review and assessment in 1998 of progress toward the year 2000 objective and consider recommendations as appropriate; and

(G) in the case of subparagraph (C), to conduct a scientific review and assessment regarding that stock or those stocks and consider further recommendations;

(H) the establishment of a per-vessel maximum annual dolphin mortality limit consistent with the established per-year mortality caps; and

(I) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

(29) *The term “Declaration of Panama” means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.*

* * * * *

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, com-

mening on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) * * *

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103, or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103. *Such authorizations may also be granted under title III with respect to the yellowfin tuna fishery of the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103.* In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate[; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable]. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

[(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

[(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

[(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting,

except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by ves-

sels, of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless

[(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

[(II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more than 1.25 times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;

[(III) the total number of eastern spinner dolphin (*Stenella longirostris*) incidentally taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does not exceed 15 percent of the total number of all marine mammals incidentally taken by such vessels in such year and the total number of coastal spotted dolphin (*Stenella attenuata*) incidentally taken by such vessels in such seasons does not exceed 2 percent of the total number of all marine mammals incidentally taken by such vessels in such year;

[(IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent fishing seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or an equivalent international program in which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessels during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such an alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and

[(V) the harvesting nation complies with all reasonable requests by the Secretary for cooperation in carrying out the scientific research program required by section 104(h)(3) of this title;]

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and prod-

ucts therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of the International Dolphin Conservation Program Act;

(ii) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps (in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission) necessary to become a member of that organization, or the Inter-American Tropical Tuna Commission, whichever is appropriate, and such harvesting nation has implemented the obligations of the International Dolphin Conservation Program and the obligations of that member as member of the Inter-American Tropical Tuna Commission;

(iii) the total dolphin mortality permitted under the International Dolphin Conservation Program will not exceed 5,000 in 1996, or in any year thereafter, consistent with the commitment and objective of progressively reducing dolphin mortality to levels approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality; and

(iv) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation has not vetoed the participation by any other nation in such Program.

(C) * * *

* * * * *

(d) *ACCEPTANCE OF DOCUMENTARY EVIDENCE.*—The Secretary shall not accept documentary evidence referred to in section 101(a)(2)(B) as satisfactory proof for purposes of section 101(a)(2) if—

(1) the government of the harvesting nation does not authorize the Inter-American Tropical Tuna Commission to release sufficient information to the Secretary to allow a determination of compliance with the International Dolphin Conservation Program; or

(2) after taking into consideration this information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including but not limited to information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvest-

ing nation is not in compliance with the International Dolphin Conservation Program.

(e) *EXEMPTION.—The provisions of this Act shall not apply to a citizen of the United States when such citizen incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6))) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.*

* * * * *

PERMITS

SEC. 104. (a) * * *

* * * * *

[(h)(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

[(2)(A) Subject to subparagraph (B), the general permit issued under paragraph (1) on December 1, 1980 to the American Tuna-boat Association is extended to authorize and govern the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna during each year after December 31, 1984.

[(B) The extension granted under subparagraph (A) is subject to the following conditions:

[(i) The extension shall cease to have force and effect at the time the general permit is surrendered or terminated.

[(ii) The permittee and certificate holders shall use the best marine mammal safety techniques and equipment that are economically and technologically practicable.

[(iii) During the period of the extension, the terms and conditions of the general permit that are in effect on the date of the enactment of this paragraph shall apply, except that

[(I) the Secretary may make such adjustments as may be appropriate to those terms and conditions that pertain to fishing gear and fishing practice requirements and to permit administration;

[(II) any such term and condition may be amended or terminated if the amendment or termination is based on the best scientific information available, including that obtained under the monitoring program required under paragraph (3)(A); and

[(III) during each year of the extension, not to exceed 250 coastal spotted dolphin (*Stenella attenuata*) and not to exceed 2,750 eastern spinner dolphin (*Stenella longirostris*) may be incidentally taken under the general permit, and no accidental taking of either species is authorized at any time when incidental taking of that species is permitted.

[(iv) The Secretary shall, by January 1, 1989, prescribe regulations to ensure that the backdown procedure during sets of the purse seine net on marine mammals is completed and roll-

ing of the net to sack up has begun no later than thirty minutes after sundown. The Secretary may waive or otherwise modify such regulations for—

[(I) a designated certificate holder on an observed trip if the Secretary determines, based on observer reports, that such restriction is not necessary because the certificate holder has consistently utilized fishing techniques and equipment so as to result in an incidental marine mammal mortality rate during sundown sets that is no higher than the average such rate for the fleet during daylight sets; or

[(II) all certificate holders on observed trips if the Secretary determines that such restriction is not necessary because all certificate holders have developed and are utilizing fishing techniques and equipment that assure that the incidental marine mammal mortality rate during sundown sets will be no higher than such rate during daylight sets.

[(v) The Secretary may authorize, after public notice and opportunity for comment, designated certificate holders to conduct experimental fishing operations on observed trips, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce the incidental mortality of marine mammals in the course of commercial yellowfin tuna fishing operations, and the Secretary may waive such terms and conditions of the general permit and this section, other than the quotas on incidental taking of marine mammals and the prohibition against encircling pure schools of certain species of marine mammals, as the Secretary determines to be necessary and appropriate for the conduct of such experimental fishing.

[(vi) The Secretary, after public notice and opportunity for comment and consultation with the skippers' panel of experts established pursuant to the general permit, shall develop and implement by not later than the beginning of the 1990 fishing season a system of performance standards to maintain the diligence and proficiency of certificate holders in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The system shall include such arrangements as are necessary for the identification of certificate holders whose incidental marine mammal mortality rate is consistently and substantially higher than the average rate of the fleet, and for the supplemental training and observation of such certificate holders, and provisions for suspension or revocation of certificates of inclusion of those certificate holders whose unacceptably high rate of incidental taking reflects a lack of diligence or proficiency in the use of the best marine mammal safety techniques and equipment.

[(vii) It shall be unlawful to use any explosive devices other than class C explosive pest control devices in the course of commercial yellowfin tuna fishing subject to the general permit. The Secretary shall prescribe regulations, effective April 1, 1990, to prohibit or restrict the use of class C explosive pest control devices in the course of commercial yellowfin tuna fish-

ing unless the Secretary determines, based on a study which the Secretary shall undertake, that the use of such devices does not result in physical impairment or increased mortality of marine mammals.

[(viii) During the 1989 and subsequent fishing seasons, each certificated vessel shall carry on every fishing trip subject to this subsection an official observer certified by the Secretary or by the Inter-American Tropical Tuna Commission for the purpose of conducting research and observing fishing operations unless, for reasons beyond the control of the Secretary, an observer is not available for such purpose. The Secretary may waive this requirement after the 1991 fishing season and establish a less extensive observer program if the Secretary, after notice and opportunity for comment, determines that such an alternative program will provide sufficiently reliable information.

[(ix) The Secretary shall annually convene meetings with representatives of conservation and environmental organizations, the commercial tuna fishing industry, and other interested persons for the purpose of discussing the results of efforts to reduce the incidental mortality and serious injury of marine mammals under this subsection as well as throughout the international fleet as a whole and developing plans for such efforts during the next year. On or before April 1, 1992, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a comprehensive report on the results of such efforts. The report shall discuss the results of the scientific research programs, performance standards, observer program, prohibition on sundown sets, development of alternative fishing techniques, and other efforts required by this section, and shall include recommendations for such action as the Secretary considers necessary and desirable to reduce further the total mortality and serious injury of marine mammals in the course of commercial yellowfin tuna fishing throughout the international fleet.

[(C) The quota on the incidental taking of coastal spotted dolphin and eastern spinner dolphin under paragraph (2)(B)(iii)(III) shall be treated

[(i) as within, and not in addition to, the overall annual quota under the general permit on the incidental taking of marine mammals; and

[(ii) for purposes of paragraph (2)(B)(iii)(II), as a term of the general permit in effect on the date of the enactment of this paragraph.

[(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

[(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

[(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 103(f) a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

[(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed \$4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.]

(h) ANNUAL PERMITS.—(1) Consistent with the regulations prescribed pursuant to section 103 and the requirements of section 101, the Secretary may issue an annual permit to a United States vessel for the taking of such marine mammals, together with regulations to cover the use of any such annual permits.

(2) Annual permits described in paragraph (1) for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 304, subject to the regulations issued pursuant to section 302.

* * * * *

INTERNATIONAL PROGRAM

SEC. 108. (a) The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multinational agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) initiate—

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums; [and]

* * * * *

(C) discussions to expeditiously negotiate revisions to the Convention for the Establishment of an Inter-American

Tropical Tuna Commission (1 UST 230, TIAS 2044) which will incorporate conservation and management provisions agreed to by the nations which have signed the Declaration of Panama; and

(D) discussions with those countries likely to participate in the International Dolphin Conservation Program, to identify alternative sources of funds to ensure that needed research and other measures benefiting effective protection of dolphins, other marine species, and the marine ecosystem;

* * * * *

MARINE MAMMAL RESEARCH GRANTS

SEC. 110. (a)【(1)】 The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).

【(2) For purposes of identifying appropriate research into promising new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals, the Secretary shall contract for an independent review of information pertaining to such potential alternative methods to be conducted by the National Academy of Sciences with individuals having scientific, technical, or other expertise that may be relevant to the identification of promising alternative fishing techniques. The Secretary shall request that the independent review be submitted to the Secretary on or before September 8, 1989, and the Secretary shall submit the report of the independent review, together with a proposed plan for research, development, and implementation of alternative fishing techniques, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on or before December 5, 1989.】

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**[TITLE III—GLOBAL MORATORIUM TO
PROHIBIT CERTAIN TUNA HARVEST-
ING PRACTICES]**

***TITLE III—INTERNATIONAL DOLPHIN
CONSERVATION PROGRAM***

SEC. 301. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds the following:

(1) * * *

* * * * *

[(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery.]

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce, with the goal of eliminating, dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.

(b) POLICY.—It is the policy of the United States to—

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

[(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

[(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;]

(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean that are not operating in compliance with the International Dolphin Conservation Program;

* * * * *

**[SEC. 302. INTERNATIONAL AGREEMENTS TO ESTABLISH GLOBAL
MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING
PRACTICES.**

[(a) IN GENERAL.—The Secretary of State, in consultation with the Secretary, may enter into international agreements which establish, in accordance with this title, a global moratorium of at least 5 years duration to prohibit harvesting tuna through the use

of purse seine nets deployed on or to encircle dolphins or other marine mammals.

[(b) TERMS OF AGREEMENT.—Any agreement entered into under this section shall—

[(1) establish a moratorium described in subsection (a) which takes effect on March 1, 1994;

[(2) include an international research program and, notwithstanding the moratorium, authorize harvesting of tuna under that program;

[(3) provide for reviews and reports in accordance with section 304 on results of research conducted under the research program;

[(4) require each country that is a party to the agreement to take all the necessary and appropriate steps to ensure compliance with the moratorium; and

[(5) encourage each country that is a party to the agreement to seek, through bilateral and multilateral negotiations, to encourage other countries that participate in fisheries to which the agreement applies to become parties to the agreement.

[(c) COMPLIANCE BY UNITED STATES WITH MORATORIUM.—The moratorium authorized under subsection (a) may be terminated prior to December 31, 1999, with respect to the United States for the harvesting of tuna in the eastern tropical Pacific Ocean only if—

[(1) the Secretary submits to the Congress in accordance with section 304(b) a recommendation that the moratorium be terminated; and

[(2) the recommendation is approved by enactment of a joint resolution of approval.

[(SEC. 303. RESEARCH PROGRAMS.]

[(a) IN GENERAL.—An agreement entered into under section 302 shall—

[(1) establish an international research program to develop methods of fishing for large yellowfin tuna—

[(A) without setting nets on dolphins or other marine mammals; or

[(B) by setting nets on dolphins or other marine mammals with zero set-caused mortality;

[(2) require that proposals for research under the program be reviewed and authorized by a competent regional organization;

[(3) require that research under the program be conducted by dedicated vessels that—

[(A) are authorized to conduct that research by a competent regional organization; and

[(B) have on board in accordance with section 305(a)(2) an observer who is responsible to, and supervised by, a competent regional organization.

[(b) LIMITATIONS ON DOLPHIN MORTALITY.—For the eastern tropical Pacific Ocean, an agreement entered into under section 302 shall require that—

[(1) the total number of research sets on dolphins conducted pursuant to this section during the period beginning March 1, 1994, and ending December 31, 1999, shall not exceed 400 an-

nually, and that the total annual dolphin mortality shall not exceed 1,000;

[(2) the Inter-American Tropical Tuna Commission shall establish a panel to review and report on the compliance of the international yellowfin tuna fishery fleet with the limits established in paragraph (1) and make recommendations as appropriate; and

[(3) the Inter-American Tropical Tuna Commission shall establish an Advisory Board of technical specialists from the international communities of scientists, government agencies, environmental groups, and the fishing industry, to assist that commission in efforts to coordinate, facilitate, and guide research.

[(c) FUNDING.—

[(1) IN GENERAL.—An agreement entered into under section 302 shall establish fair and equitable mechanisms for funding research conducted pursuant to this section.

[(2) PROCEEDS OF RESEARCH HARVESTS.—An agreement entered into under section 302 shall provide that the proceeds of any tuna harvested for the purpose of research conducted pursuant to this section should, to the extent possible, be used for funding research conducted pursuant to this section.

[(3) LIMITATION ON USE OF UNITED STATES FUNDING.—Funding provided by the United States for research shall be used only for the purpose of developing methods of fishing for large yellowfin tuna that do not involve intentionally encircling dolphins or other marine mammals.

[(d) REVIEW OF RESEARCH PROPOSALS.—The Marine Mammal Commission established under section 201 shall—

[(1) review all research proposals submitted to the Inter-American Tropical Tuna Commission; and

[(2) recommend an appropriate response to each of those proposals, to the United States Commissioners on the Inter-American Tropical Tuna Commission.

[SEC. 304. REVIEWS, REPORTS, AND RECOMMENDATIONS.]

[(a) REPORTS BY THE SECRETARY.—The Secretary shall submit annual reports to the Congress which include—

[(1) results of research conducted pursuant to section 303;

[(2) a description of the status of stocks of yellowfin tuna;

[(3) an assessment of the economic impacts on the tuna industry and consumers caused by the moratorium established by agreements entered into under section 302;

[(4) an assessment of the effectiveness of the moratorium in protecting dolphin populations in the eastern tropical Pacific Ocean;

[(5) results of reviews conducted under section 305(c);

[(6) copies of any international agreements or undertakings authorized by or related to this title;

[(7) an assessment of the impact on fishery resources, other than yellowfin tuna, of methods of fishing for large yellowfin tuna in the eastern tropical Pacific Ocean that do not involve the intentional encirclement of dolphins; and

[(8) any other relevant information.

[(b) RECOMMENDATIONS OF THE SECRETARY.—If a competent regional organization under the auspices of which research is conducted pursuant to section 303, or any country which participates in such an organization, submits to the United States a recommendation that a moratorium established by agreements entered into under section 302 should be terminated prior to December 31, 1999, the Secretary shall—

[(1) review the information on which the recommendation is based;

[(2) consult with relevant Federal agencies, including the Marine Mammal Commission, and other interested persons; and

[(3) submit to the Congress a recommendation regarding the termination of the moratorium.

[SEC. 305. INTERNATIONAL COMMITMENTS.

[(a) LIMITATION ON APPLICATION OF BAN ON IMPORTS.—Except as provided in subsection (b), the Secretary of the Treasury shall not, under section 101(a)(2) (A) and (B), ban the importation of yellowfin tuna or yellowfin tuna products from a country that transmits to the Secretary of State a formal communication in which the country commits to—

[(1) implement a moratorium of at least 5 years duration beginning March 1, 1994, on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals unless the moratorium is terminated in accordance with section 302(c);

[(2) require an observer on each vessel of the country larger than 400 short tons carrying capacity which engages in purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, and ensure that at least 50 percent of all such observers are responsible to, and supervised by, a competent regional organization;

[(3) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in 1992 to a level that is lower than such mortality in 1991 by a statistically significant margin; and

[(4) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in the period beginning January 1, 1993, and ending February 28, 1994, to a level that is lower than such mortality in 1992 by a statistically significant margin.

[(b) SUBSEQUENT BANS ON FISH AND FISH PRODUCT IMPORTS FOR FAILURE TO COMPLY WITH COMMITMENTS.—

[(1) BAN ON IMPORTS OF YELLOWFIN TUNA AND YELLOWFIN TUNA PRODUCTS.—The Secretary, in consultation with the Secretary of State, shall periodically determine whether each country which has transmitted a formal communication expressing the commitments described in subsection (a) is fully implementing those commitments. If the Secretary determines that any such country is not implementing those commitments—

[(A) the Secretary shall notify the President and the Congress of that determination; and

[(B) 15 days after such notification, the Secretary of the Treasury shall ban the importation from that country of all yellowfin tuna and yellowfin tuna products.

[(2) BAN ON IMPORTS OF OTHER FISH AND FISH PRODUCTS.—

[(A) IN GENERAL.—If—

[(i) a country does not, within 60 days after the establishment with respect to that country of a ban on importation under paragraph (1)(B), certify and provide reasonable proof to the Secretary that the country has fully implemented the commitment described in subsection (a)(1) or has taken the necessary actions to remedy its failure to comply with the commitments described in subsection (a) (2), (3), and (4); and

[(ii) the Secretary does not, before the end of that 60-day period, certify to the President that the country has provided such certification and proof;

the President shall direct the Secretary of the Treasury to ban the importation from that country of all articles (other than those subject to an importation ban under paragraph (1)(B)) that are classified under one or more of those fish and fish product categories that the President, subject to subparagraph (B), considers appropriate to carry out this paragraph.

[(B) BAN CRITERIA.—The one or more fish and fish product categories to which the President imposes an import ban under subparagraph (A) with respect to a country must be a fish and fish product category or categories with respect to which the articles classified thereunder and imported from that country in the base year had an aggregate customs valuation equal to 40 percent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from that country during the base year.

[(C) DEFINITION OF BASE YEAR.—For purposes of subparagraph (B), the term “base year” means the calendar year immediately occurring before the calendar year in which the import ban under subparagraph (A) commences with respect to the country.

[(3) DURATION OF IMPORT BANS.—Bans on importation imposed under paragraphs (1) and (2) with respect to a country shall continue in effect until the Secretary determines that the country is implementing the commitments described in subsection (a).

[(4) IMPLEMENTATION OF IMPORT BANS.—The Secretary of the Treasury shall take such action as may be necessary or appropriate to implement importation bans imposed under paragraphs (1) and (2).

[(c) REVIEWS AND REPORTS.—The Secretary, in consultation with the Secretary of State, shall—

[(1) periodically review the activities of countries which have transmitted to the Secretary of State formal communications expressing the commitments described in subsection (a), to determine whether those countries are complying with those commitments; and

[(2) include the results of those reviews in annual reports submitted to the Congress pursuant to section 304(a).

[SEC. 306. PERMITS FOR TAKING DOLPHINS.

[(a) **ADDITIONAL RESTRICTIONS UNDER GENERAL PERMIT.**—Notwithstanding section 104(h), the general permit issued to the American Tunaboat Association on December 1, 1980, shall be subject to the following additional restrictions:

[(1) Total dolphin mortalities (including mortalities resulting from research) authorized by the permit shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994.

[(2) No purse seine net may be deployed under the permit on or to encircle any school of dolphins in which any eastern spinner dolphin (*Stenella longirostris*) or coastal spotted dolphin (*Stenella attenuata*) is observed prior to release of the net skiff.

[(3) The permit shall expire March 1, 1994, unless no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before that date (notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country).

[(4) If no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before March 1, 1994, and notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country—

[(A) the total dolphin mortalities authorized by the permit for each year after 1992, including mortalities caused by research, shall not exceed the number of dolphin mortalities which occurred under the permit during the preceding year;

[(B) the total dolphin mortalities occurring under the permit each year shall continue to be reduced by statistically significant amounts each year to levels approaching zero by December 31, 1999;

[(C) the permit shall be subject to any additional restrictions that the Secretary considers appropriate; and

[(D) the permit shall expire December 31, 1999.

[(b) **PERMITS REQUIRED FOR TAKING DOLPHINS FOR RESEARCH PURPOSES.**—An agreement entered into under section 302 shall not supersede or be interpreted to supersede any provision of this Act under which a permit under this Act is required for activities conducted pursuant to this title.

[(c) **MAJOR PURSE SEINE TUNA FISHING COUNTRY DEFINED.**—For purposes of this section, the term “major purse seine tuna fishing country” means a country which on the effective date of this title has an active purse seine tuna fishing fleet of 20 or more vessels.]

SEC. 302. AUTHORITY OF THE SECRETARY.

(a) **REGULATIONS TO IMPLEMENT PROGRAM REGULATIONS.**—(1) *The Secretary shall issue regulations to implement the International Dolphin Conservation Program.*

(2)(A) *Not later than 3 months after the date of enactment of this section, the Secretary shall issue regulations to authorize and govern the incidental taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.*

(B) *Regulations issued under this section shall include provisions—*

- (i) requiring observers on each vessel;*
- (ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of marine mammals in fishing operations;*
- (iii) prohibiting intentional deployment of nets on, or encirclement of, dolphins in violation of the International Dolphin Conservation Program;*
- (iv) requiring the use of special equipment, including dolphin safety panels in nets, ocean current sensors or monitoring devices, as practicable, to detect unsafe fishing conditions before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;*
- (v) ensuring that the backdown procedure during the deployment of nets on, or encirclement of, dolphins is completed and rolling of the net to sack up has begun no later than 30 minutes after sundown;*
- (vi) banning the use of explosive devices in all purse seine operations;*
- (vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits, in accordance with the International Dolphin Conservation Program;*
- (viii) preventing the intentional deployment of nets on, or encirclement of, dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;*
- (ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;*
- (x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment (including new technology for detecting unsafe fishing conditions before nets are deployed by a tuna vessel) that may reduce or eliminate dolphin mortality or do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;*
- (xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and*

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) The Secretary may make such adjustments as may be appropriate to the requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

(b) CONSULTATION.—In developing regulations under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

(c) EMERGENCY REGULATIONS.—(1) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse effect on a marine mammal stock or species, the Secretary shall take actions as follows—

(A) notify the Inter-American Tropical Tuna Commission of the Secretary's findings, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

(2) Prior to taking action under paragraph (1) (A) or (B), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof; and

(B) shall remain in effect for the duration of the applicable fishing year; and

The Secretary may terminate such emergency regulations at a date earlier than that required by subparagraph (B) by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for the emergency action no longer exist.

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

(d) RESEARCH.—The Secretary shall, in cooperation with the nations participating in the International Dolphin Conservation Program and with the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program. Such research may include but shall not be limited to any of the following:

(1) Devising cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality

and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean.

(2) Developing cost-effective methods of fishing for mature yellowfin tuna without deployment of nets on, or encirclement of, dolphins or other marine mammals.

(3) Carrying out a stock assessment as described in section 117 for those marine mammal species and stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States.

(4) Studying the effects of chase and encirclement on the health and biology of dolphin and individual dolphin populations incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. There are authorized to be appropriated to the Department of Commerce \$1,000,000 to be used by the Secretary, acting through the National Marine Fisheries Service, to carry out this paragraph. Upon completion of the study, the Secretary shall submit a report containing the results of the study, together with recommendations, to the Congress and to the Inter-American Tropical Tuna Commission.

(5) Determining the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks, and nontarget species.

The Secretary shall include a description of the annual results of research carried out under this subsection in the report required under section 303.

SEC. 303. REPORTS BY THE SECRETARY.

Notwithstanding section 103(f), the Secretary shall submit an annual report to the Congress which includes each of the following:

(1) The results of research conducted pursuant to section 302.

(2) A description of the status and trends of stocks of tuna.

(3) A description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and other nontarget species.

(4) A description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin populations in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program.

(5) Actions taken by the Secretary under subsections (a)(2)(B) and (d) of section 101.

(6) Copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title.

(7) Any other information deemed relevant by the Secretary.

SEC. 304. PERMITS.

(a) *IN GENERAL.*—(1) Consistent with section 302, the Secretary is authorized to issue a permit to a vessel of the United States author-

izing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including, but not limited to, requiring the submission of—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 302, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available, subject to appropriations, to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) PERMIT SANCTIONS.—(1) In any case in which—

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 305;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 305; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue, the Secretary may—

(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose

in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.

SEC. [307.] 305. PROHIBITIONS.

(a) **IN GENERAL.**—It is unlawful—

[(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;

[(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except—

[(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;

[(B) in accordance with a recommendation that is approved under section 302(c)(2); or

[(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 306(a)), notwithstanding any agreement under section 302 with a country that is not a major purse seine tuna fishing country (as that term is defined in section 306(c));

[(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 305(b) (1) or (2);]

(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated steps, in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(2) except in accordance with this title and regulations issued pursuant to this title as provided for in subsection 101(e), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean; or

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);

* * * * *

(b) **PENALTIES.**—

(1) CIVIL PENALTY.—A person that knowingly and willfully violates subsection (a) (1), (2), (3), (4), or (5) shall be subject to a civil penalty under section 105(a).

(2) CRIMINAL PENALTY.—A person that knowingly and willfully violates subsection (a)(5) and (a)(6) shall be subject to a criminal penalty under section 105(b).

* * * * *

[(d) DOLPHIN SAFE TUNA.—For purposes of this section, tuna or a tuna product is dolphin safe if—

[(1) it does not contain tuna that was harvested on the high seas by a vessel engaged in driftnet fishing, as that term is defined in section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987;

[(2) in the case of tuna or a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean, it is dolphin safe under subsection (d)(2) of the Dolphin Protection Consumer Information Act;

[(3) in the case of tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; and

[(4) in the case of tuna or a product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals, it is accompanied by a written statement executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.]

SEC. [308.] 306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the National Marine Fisheries Service for carrying out section [303] 302(d), \$3,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

* * * * *

SECTION 901 OF THE DOLPHIN PROTECTION CONSUMER INFORMATION ACT

DOLPHIN PROTECTION

SEC. 901. (a) SHORT TITLE.—This section may be cited as the “Dolphin Protection Consumer Information Act”.

* * * * *

(d) LABELING STANDARD.—[(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label

of that product the term “Dolphin Safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

[(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

[(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

[(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

[(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

[(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin;

[(ii) the product is accompanied by a written statement executed by—

[(I) the Secretary or the Secretary’s designee, or

[(II) a representative of the Inter-American Tropical Tuna Commission,

which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

[(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.] *(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term “Dolphin Safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains any of the following:*

(A) Tuna harvested on the high seas by a vessel engaged in driftnet fishing.

(B) Tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (2).

(C) Tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (3).

(D) Tuna harvested by a vessel engaged in any other fishery with a regular and significant incidental mortality of marine mammals.

(2)(A) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a ves-

sel using purse seine nets is dolphin safe if the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins, or if the product meets the requirements of subparagraph (B).

(B) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no dolphins were killed during the sets in which the tuna were caught and the product is accompanied by a written statement executed by—

- (i) the Secretary or the Secretary's designee;*
- (ii) a representative of the Inter-American Tropical Tuna Commission; or*
- (iii) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,*

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and documents that no dolphins were killed during the sets in which the tuna concerned were caught.

(C) The statements referred to in clauses (i), (ii), and (iii) of subparagraph (B) shall be valid only if they are endorsed in writing by each exporter, importer, and processor of the product, and if such statements and endorsements comply with regulations promulgated by the Secretary which would provide for the verification of tuna products as dolphin safe.

(3) For purposes of paragraph (1)(C), tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

(A) it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; or

(B) in any fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, it is accompanied by a written statement executed by the captain of the vessel and an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

(4) For purposes of paragraph (1)(D), tuna or a tuna product that contains tuna harvested in a fishery identified by the Secretary as having a regular and significant incidental mortality or serious injury of marine mammals is dolphin safe if it is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary certifying that no marine mammals were killed in the course of the fishing operation or operations in which the tuna were caught.

(5) *No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, unless such product is labeled as dolphin safe in accordance with this subsection.*

* * * * *

[(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after the date of the enactment of this Act, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d).]

(f) *TRACKING AND VERIFICATION.*—*The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement subsection (d) not later than 3 months after the date of enactment of the International Dolphin Conservation Program Act. Such regulations shall, consistent with international efforts and in coordination with the Inter-American Tropical Tuna Commission, establish a domestic and international tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d), including but not limited to each of the following:*

(1) *Specific regulations and provisions addressing the use of weight calculation.*

(2) *Additional measures to enhance observer coverage if necessary.*

(3) *Well location and procedures for monitoring, certifying, and sealing holds above and below deck or other equally effective methods of tracking and verifying tuna labeled under subsection (d).*

(4) *Reporting receipt of and database storage of radio and facsimile transmittals from fishing vessels containing information related to the definition of sets.*

(5) *Shore-based verification and tracking throughout the transshipment and canning process.*

(6) *Provisions for annual audits for caught, landed, and processed tuna products labeled in accordance with subsection (d). The Secretary, when developing these regulations, shall establish appropriate procedures for ensuring the confidentiality of proprietary information either mandated or submitted voluntarily.*

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TUNA CONVENTIONS ACT OF 1950

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SEC. 3. The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Of such Commissioners—

(a) * * *

* * * * *

[(c) at least one shall be an officer of the United States Fish and Wildlife Service; and]

(c) at least one shall be either the Director, or an appropriate regional director, of the National Marine Fisheries Service; and

* * * * *

【SEC. 4. The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.】

SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

The Secretary, in consultation with the United States Commissioners, shall:

(1) Appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations. The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

(2) Appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations. The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean. In addition, the Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include each of the following:

(A) The review of data from the Program, including data received from the Inter-American Tropical Tuna Commission.

(B) Recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research.

(C) Recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments.

(D) Consulting with other experts as needed.

(E) Recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or equivalent).

(3) Establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data. The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.

(4) Fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

* * * * *

DISSENTING VIEWS

In October 1995, five environmental organizations announced their support for a document which became known as the “Panama Declaration”: the result of their negotiations with the government of Mexico on changes to the Marine Mammal Protection Act (MMPA) and U.S. tuna labeling law. Until their announcement, the Congress, general public, and other interested parties had been unaware that these negotiations were underway.

Since that time, numerous efforts have been made by those not include in the negotiations—including the ranking Democrats on the subcommittee and committee of jurisdiction—to find a compromise on this highly controversial and emotional issue. However, the supporters of H.R. 2823 have consistently argued that the Panama Declaration is an unamenable agreement, presented to the Congress under much the same terms as a Fast Track agreement. They have rejected any compromise not supported by the Mexican government and the Mexican tuna industry. We find the substance of this legislation unacceptable, and object to the dangerous precedent set by the process under which it was brought before the Congress.

The “fast track” analogy is appropriate, since there is little doubt that the international trade dispute between Mexico and the United States over dolphin protection is the driving force behind the legislation. In 1990, Mexico and Venezuela filed a formal complaint with the General Agreement on Tariffs and Trade (GATT) regarding provisions in the U.S. Marine Mammal Protection Act which prohibit imports of tuna from nations whose tuna fishing fleets killed more dolphins than the U.S. fleet. Public outrage at the high level of slaughter prompted the embargoes, and the U.S. tuna canning industry announced a voluntary policy of refusing to purchase tuna caught by harming or killing dolphins: the now well-known “Dolphin Safe” label found on cans of tuna sold in the United States.

The GATT panel of judges hearing the Mexican complaint ruled against the United States, declaring, among other things, that no nation could impose trade restrictions against another (a) based on the way a product is harvested or made; or (b) to conserve natural resources outside of its territorial jurisdiction. Since that time, Mexico has been pressuring the U.S. to change its laws and lift the embargoes. Pressure has been particularly strong since the collapse of the peso and the resulting Mexican need for lucrative foreign markets for its products. Recently, Mexico and other nations have also threatened to renew their complaint under the auspices of the GATT’s successor, the World Trade Organization (WTO). Under WTO rules, the U.S. can no longer block the implementation of a unfavorable ruling, and would have to change its laws to comply

with the WTO ruling or compensate Mexico for the loss of the U.S. tuna market.

There has been a great deal of confusion within the Congress and elsewhere regarding the provisions of U.S. law on which the original GATT ruling was based. Currently, canned yellowfin tuna from most latin American nations fishing in the eastern Pacific is banned from the U.S. due to a 1988 amendment to the MMPA. That amendment establishes a so-called "comparability" standard for tuna fishing, and is based on a broad general requirement in the MMPA requiring that nations selling fish products in the U.S. have a marine mammal conservation program "comparable" to that of the U.S.

"Comparability" for purse-seine tuna fishing requires that the tuna fishing fleet of any nation seeking to export its yellowfin tuna into the U.S. must not kill more than $1.25 \times$ the number of dolphins killed by the U.S. fleet. At the time of its enactment, the U.S. fleet of approximately 50 vessels was fishing in the eastern Pacific, and was responsible for almost 20,000 dolphin deaths in 1988. In the same year, the foreign fleets killed almost 60,000 dolphins.

Two years later, the tuna canning companies of Starkist, Chicken of the Sea, and Bemblebee announced that they would not longer sell tuna caught by harming dolphins: a voluntary dolphin-safe policy. The announcement prompted Congress to respond with a statutory definition of "dolphin safe", and most of the U.S. fishing fleet relocated to American Samoa and began fishing in the western Pacific, where tuna is caught without casing, netting, and killing dolphins. The relocation effectively established a comparability standard of zero for other nations wishing to sell yellowfin tuna in the U.S. and prompted Mexico to issue a GATT challenge against the MMPA embargo provisions.

It is important to note that it is this comparability provision of the MMPA which was judged by the GATT to be an illegal trade restriction—and not the dolphin-safe labeling law which has become the focus of the legislation currently under consideration. The GATT's decision was based on a violation of the so-called "national treatment" standard of the GATT; i.e., the embargo provision treated fishermen from other nations differently than it treated U.S. fishermen.

Over the last six years, Mexico and the other nations fishing in the eastern Pacific have drastically reduced their level of dolphin mortality, to just over 3000 animals in 1995. Although the supporters of H.R. 2823 have accused its opponents of wanting to maintain the status quo in the eastern Pacific tuna fishery, an alternative bill, H.R. 2856, was introduced by Mr. Miller of California and offered as a substitute to H.R. 2823 during the subcommittee's consideration of the legislation.

H.R. 2856 would also lift the tuna embargoes, but would leave in place the existing U.S. dolphin-safe tuna market. Under these provisions, Mexico and other nations could sell their dolphin-safe tuna in the U.S. but would be continue to sell elsewhere their tuna caught by killing dolphins. This compromise has been unacceptable to Mexico, which has instead increased its lobbying efforts for passage of H.R. 2823.

In addition, all Democratic efforts to find a consensus on this legislation have broken down over a change to the definition of “dolphin safe” proposed in H.R. 2823. Mexico—and therefore the supporters of H.R. 2823—have consistently rejected any changes to U.S. laws that do not include a change in the statutory definition behind the well-known “Dolphin Safe” label. Supporters of H.R. 2856, on the other hand, believe that allowing foreign governments to dictate the terms of U.S. labeling standards is not acceptable to most Americans, and that changing the definition at a time when the scientific evidence indicates otherwise sets a dangerous precedent for other consumer information and labelling programs on products ranging from children’s toys to food items.

Under the current statutory definition of dolphin-safe—which when enacted in 1990 was supported by the Bush Administration and most of the organizations now supporting H.R. 2823—no tuna product can be labelled “Dolphin Safe” if caught by chasing, harassing, or netting of dolphins. In this fishing method, large tuna purse-seine vessels deploy two to three speedboats and, generally, a helicopter in a high-speed, non-stop chase until the exhausted dolphins and the tuna swimming with them can be encircled with a net.

H.R. 2823 as adopted by the Committee on Resources would change the meaning of dolphin-safe to allow dolphins to be chased and netted without limit. Mothers could be separated from their calves, feeding disrupted or prevented, animals could even be injured and, provided that no dolphins are observed to die during this process, the tuna could be labelled with the famous “Dolphin Safe” label.

Marine mammal biologists are divided over the potential impact this fishing method may have on dolphin populations. Committee staff spoke with several biologists who have studied these dolphin populations for years—in some cases, for more than a decade—and those biologists have expressed serious concerns about the ramifications of changing the dolphin-safe definition while also opening U.S. markets to all tuna caught under international agreement in the eastern Pacific. The change would certainly increase the effort to catch tuna through the chasing and netting of dolphins. Under this agreement as codified by H.R. 2823, tuna caught by killing dolphins (with an annual mortality limit of 5000 animals) could also be sold in the U.S., although without the “Dolphin Safe” label.

The two dolphin stocks most frequently chased and netted during tuna fishing—the eastern spinner and the northern offshore spotted dolphin—are at 20% or less of their original population sizes, according to biologists from the national Marine Fisheries Service. Although mortalities of these two stocks have been reduced greatly in recent years, neither stocks shows any signs of increase. With mortalities low, some biologists believe that the effects described above may be the reason for the unexplained but continued lack of recovery. They have suggested that Congress authorize a study to determine the possible effects of chase and encirclement prior to making these changes.

Although Committee Democrats offered an amendment to H.R. 2823 which was based on the recommendations of these scientists, the Committee Majority rejected the scientific advice, no better de-

fense for their adherence to Mexico's insistence on a definition change than that no studies had been conducted to indicate that the process was not safety for dolphins. We find this defense shortsighted, and suggest that in fact, the above information on dolphin stocks demonstrates that the little evidence we have on this issue indicates that the wiser course would in fact be the opposite of that chosen by the Committee. Applying the Majority's views to other products would support, for example, the application of a "Child Safe" label to toys provided that no studies had been conducted to prove them harmful to children. We believe this standard sets a dangerous precedent for other consumer information programs, and cannot support any legislation containing this provision.

GEORGE MILLER.
FRANK PALLONE, Jr.
MAURICE D. HINCHEY.
EDWARD J. MARKEY.
GERRY STUDDS.
PATRICK F. KENNEDY.
PETER DEFazio.
ENI FALEOMAVAEGA.

ADDITIONAL DISSENTING VIEWS

During the Committee's consideration of H.R. 2823, I offered an amendment intended to prevent American taxpayers from funding the Mexican-dominated yellowfin tuna fishery in the eastern tropical Pacific Ocean. The Committee, largely along party lines, opposed the amendment. By refusing to adopt the amendment, the Committee will cost taxpayers millions of dollars in coming years and continue the current U.S. practice of subsidizing the Mexican tuna industry.

Tuna fishing in the eastern tropical Pacific Ocean is managed by an international organization established in 1949: the Inter-American Tropical Tuna Commission (IATTC). The convention establishing the IATTC requires nations to contribute to its expenses based on the proportion of the total catch "utilized" by that nation. The convention also defines "utilization" to mean the fish consumed by that nation or the level of financial gain that nation receives from the fishery.

Following enactment of the Dolphin Protection and Consumer Information Act in 1990, most of the U.S. tuna fishing fleet left the eastern Pacific to fish dolphin-safe in the western Pacific Ocean. Although U.S. consumption of tuna from the eastern Pacific has dropped to less than 5% of the total catch in recent years, and the U.S. fleet has relocated to lucrative fishing grounds in the western Pacific, the American taxpayer continues to pick up the tab for the management of a fishery whose profits go to Mexico, Venezuela, and other nations. The chart which follows these remarks breaks down the 1994 government contributions to the IATTC.

Not only does the IATTC receive virtually its entire operating budget from the U.S., it also occupies U.S. government office space virtually rent-free.

The IATTC headquarters is located in approximately 20,000 square feet of a building occupied by the National Marine Fisheries Service on the ocean front in La Jolla, California. Paying only \$24,000 annually for expenses, the IATTC is receiving an additional significant subsidy from the U.S. taxpayer.

In an effort to better understand exactly how much the IATTC is benefitting from U.S. taxpayers, we contacted commercial real estate brokers in La Jolla to inquire about the cost of leasing 20,000 square feet of waterfront office space. The brokers informed us that it would be virtually impossible to find office space of that size in any one building in La Jolla, indicating that in addition to the financial subsidy, the IATTC benefits considerably from the sheer convenience of the location. If available, the space would rent for an average of \$24 per square foot—or approximately \$500,000 annually.

During the Committee's consideration of H.R. 2823, the bill's supporters noted that the above chart did not include Mexico's

1995 contribution of approximately \$2 million to the IATTC's tuna/dolphin research program. We would respond to those who defend the U.S. subsidy of the Mexican industry that, during the past five years while Mexico reaped the benefits of this fishery, the Congress has also appropriated a minimum of \$500,000 annually for similar research.

By our calculations, the U.S. taxpayer has subsidized the Mexican tuna industry by no less than \$12 million over the past five years.

The amendment would have (a) included a sense of the Congress that each nation fishing for tuna in the eastern Pacific should pay an equitable share of the IATTC budget; and (b) assured that the U.S. contribution to the IATTC would never exceed the U.S. share based on its utilization of the fishery.

While the Committee Majority supported retaining the sense of the Congress provision, they chose to delete the language that would have assured protection for American taxpayers. At a time when the Republican Majority in the Congress is cutting assistance to America's poor, opposes any increase in the minimum wage, and is attacking Medicaid and Medicare in order to reduce the federal deficit, I find the unwavering support of a U.S. taxpayer subsidy of the Mexican fishing industry disingenuous at best.

GOVERNMENT CONTRIBUTIONS TO THE INTER AMERICAN TROPICAL TUNA COMMISSION (1994)

This chart reflects the trend of the past five years. The 1994 budget of the Inter American Tropical Tuna Commission (IATTC) was \$4,395,633,¹ of which \$1,967,783 were salary expenses for IATTC staff. Government contributions to the IATTC for joint expenses were:

Country	Contribution	Tuna vessels
U.S.	(91%) \$2,734,000	(8%) 9
Japan	262,761	0
France	17,501	0
Nicaragua	500	0
Panama	500	1
Vanuatu	500	17
Mexico	0	(36%) 39
Venezuela	0	20
Ecuador	0	11
Colombia	0	7
St. Vincent	0	2
Belize	0	1
Cyprus	0	1
Spain	0	1
Total	3,015,762	109

GEORGE MILLER.

¹Source for all figures: 1994 Annual Report of the Inter American Tropical Tuna Commission. At the time of Committee consideration of the legislation, the 1995 Annual Report had not yet been published.

APPENDIX

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, June 27, 1996.

Hon. DON YOUNG,
Chairman, Committee on Resources, Longworth House Office Building, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On May 8, 1996, the Committee on Resources ordered reported H.R. 2823, the "International Dolphin Conservation Program Act." This measure, among other things, provides for the implementation of the Declaration of Panama signed in 1995 by the United States and 11 other nations.

H.R. 2823 includes several provisions within the jurisdiction of the Committee on Commerce. In implementing the Declaration, the bill amends the "Dolphin Consumer Information Act of 1989," on which the Commerce Committee took action during the 101st Congress. The 1989 Act was incorporated into the reauthorization bill for the Magnuson Fishery Conservation and Management Act (PL 101-627). H.R. 2823 provides for implementation of the Declaration in an effort to increase international participation in activities to reduce the number of dolphins and other marine mammals that die each year as a result of tuna fishing techniques. The Act would modify the definition of "dolphin safe" for the purpose of labeling tuna products sold in the United States, and alter current regulations on the importation of tuna products. Also, the bill would make misuse of the "dolphin safe" label an unfair and deceptive trade practice under Section 5 of the Federal Trade Commission Act.

Recognizing your Committee's desire to bring this legislation expeditiously before the House, I will not seek a sequential referral of the bill. However, by agreeing not to seek a sequential referral, this Committee does not waive its jurisdictional interest in the matter. I reserve the right to seek equal conferees on all provisions of the bill that are within my Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I want to thank you and your staff for your assistance in providing the Commerce Committee with an opportunity to review its jurisdictional interests in H.R. 2823.

I would appreciate your including this letter as a part of the Resource Committee's report on H.R. 2823, and as part of the record during consideration of this bill by the House.

Sincerely,

THOMAS J. BLILEY, JR., *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, June 27, 1996.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, Committee on Commerce, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding the jurisdictional interest of your committee in H.R. 2823, the International Dolphin Conservation Program Act. As noted in your letter, my Committee ordered this legislation reported on May 8, 1996. In the interests of moving this legislation forward, I appreciate your decision not to exercise your right to a sequential referral of the bill.

In addition to recognizing your jurisdictional claims, I will support your request for conferees on provisions of the measure within the jurisdiction of the Committee on Commerce should the measure proceed to conference.

I appreciate your cooperation and that of your staff (especially Paige Estep) in helping expedite consideration of this important environmental bill. I look forward to bringing it before the House of Representatives soon.

Sincerely,

DON YOUNG, *Chairman.*

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